

**GUARDIANSHIP AMENDMENTS**

2011 GENERAL SESSION

STATE OF UTAH

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**LONG TITLE****General Description:**

This bill creates the Utah Protective Proceedings Act within the Probate Code.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ creates a method within the courts for the appointment of a guardian or conservator for a minor or an incapacitated adult;
- ▶ eliminates a local school board's ability to designate guardians for students within their district;
- ▶ eliminates expedited guardianship proceedings for residents of the Utah State Developmental Center; and
- ▶ makes technical corrections.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

This bill takes effect on July 1, 2011.

**Utah Code Sections Affected:****AMENDS:**

- 53A-2-201**, as last amended by Laws of Utah 1995, Chapter 282
- 53A-2-203.5**, as enacted by Laws of Utah 1998, Chapter 124
- 75-1-201**, as last amended by Laws of Utah 2010, Chapter 93
- 75-1-401**, as last amended by Laws of Utah 2010, Chapter 90
- 75-5-501**, as last amended by Laws of Utah 2003, Chapter 241
- 75-5b-102**, as enacted by Laws of Utah 2008, Chapter 253
- 75-5b-302**, as enacted by Laws of Utah 2008, Chapter 253
- 78B-5-804**, as renumbered and amended by Laws of Utah 2008, Chapter 3

**ENACTS:**

33           **75-5c-101**, Utah Code Annotated 1953  
34           **75-5c-102**, Utah Code Annotated 1953  
35           **75-5c-103**, Utah Code Annotated 1953  
36           **75-5c-104**, Utah Code Annotated 1953  
37           **75-5c-105**, Utah Code Annotated 1953  
38           **75-5c-106**, Utah Code Annotated 1953  
39           **75-5c-107**, Utah Code Annotated 1953  
40           **75-5c-110**, Utah Code Annotated 1953  
41           **75-5c-111**, Utah Code Annotated 1953  
42           **75-5c-112**, Utah Code Annotated 1953  
43           **75-5c-113**, Utah Code Annotated 1953  
44           **75-5c-114**, Utah Code Annotated 1953  
45           **75-5c-115**, Utah Code Annotated 1953  
46           **75-5c-116**, Utah Code Annotated 1953  
47           **75-5c-117**, Utah Code Annotated 1953  
48           **75-5c-118**, Utah Code Annotated 1953  
49           **75-5c-119**, Utah Code Annotated 1953  
50           **75-5c-120**, Utah Code Annotated 1953  
51           **75-5c-121**, Utah Code Annotated 1953  
52           **75-5c-122**, Utah Code Annotated 1953  
53           **75-5c-123**, Utah Code Annotated 1953  
54           **75-5c-124**, Utah Code Annotated 1953  
55           **75-5c-125**, Utah Code Annotated 1953  
56           **75-5c-201**, Utah Code Annotated 1953  
57           **75-5c-202**, Utah Code Annotated 1953  
58           **75-5c-203**, Utah Code Annotated 1953  
59           **75-5c-204**, Utah Code Annotated 1953  
60           **75-5c-301**, Utah Code Annotated 1953  
61           **75-5c-302**, Utah Code Annotated 1953  
62           **75-5c-303**, Utah Code Annotated 1953  
63           **75-5c-304**, Utah Code Annotated 1953

64        **75-5c-305**, Utah Code Annotated 1953  
65        **75-5c-306**, Utah Code Annotated 1953  
66        **75-5c-307**, Utah Code Annotated 1953  
67        **75-5c-308**, Utah Code Annotated 1953  
68        **75-5c-401**, Utah Code Annotated 1953  
69        **75-5c-402**, Utah Code Annotated 1953  
70        **75-5c-403**, Utah Code Annotated 1953  
71        **75-5c-404**, Utah Code Annotated 1953  
72        **75-5c-405**, Utah Code Annotated 1953  
73        **75-5c-406**, Utah Code Annotated 1953  
74        **75-5c-407**, Utah Code Annotated 1953  
75        **75-5c-408**, Utah Code Annotated 1953  
76        **75-5c-409**, Utah Code Annotated 1953  
77        **75-5c-410**, Utah Code Annotated 1953  
78        **75-5c-411**, Utah Code Annotated 1953  
79        **75-5c-412**, Utah Code Annotated 1953  
80        **75-5c-413**, Utah Code Annotated 1953  
81        **75-5c-414**, Utah Code Annotated 1953  
82        **75-5c-415**, Utah Code Annotated 1953  
83        **75-5c-416**, Utah Code Annotated 1953  
84        **75-5c-417**, Utah Code Annotated 1953  
85        **75-5c-418**, Utah Code Annotated 1953  
86        **75-5c-419**, Utah Code Annotated 1953  
87        **75-5c-420**, Utah Code Annotated 1953  
88        **75-5c-421**, Utah Code Annotated 1953

89    RENUMBERS AND AMENDS:

90        **75-5c-309**, (Renumbered from 75-5-314, as enacted by Laws of Utah 1975, Chapter  
91            150)  
92        **75-5c-310**, (Renumbered from 75-5-315, as enacted by Laws of Utah 1975, Chapter  
93            150)

94 REPEALS:

95 **53A-2-202**, as last amended by Laws of Utah 1998, Chapter 263

96 **75-5-101**, as enacted by Laws of Utah 1975, Chapter 150

97 **75-5-102**, as last amended by Laws of Utah 2004, Chapter 198

98 **75-5-103**, as enacted by Laws of Utah 1975, Chapter 150

99 **75-5-104**, as enacted by Laws of Utah 1975, Chapter 150

100 **75-5-105**, as enacted by Laws of Utah 1975, Chapter 150

101 **75-5-201**, as last amended by Laws of Utah 1998, Chapter 124

102 **75-5-202**, as last amended by Laws of Utah 1985, Chapter 41

103 **75-5-202.5**, as enacted by Laws of Utah 1985, Chapter 41

104 **75-5-203**, as last amended by Laws of Utah 1985, Chapter 41

105 **75-5-204**, as last amended by Laws of Utah 1985, Chapter 41

106 **75-5-205**, as enacted by Laws of Utah 1975, Chapter 150

107 **75-5-207**, as last amended by Laws of Utah 1995, Chapter 156

108 **75-5-208**, as last amended by Laws of Utah 1985, Chapter 41

109 **75-5-209**, as last amended by Laws of Utah 2008, Chapter 3

110 **75-5-210**, as enacted by Laws of Utah 1975, Chapter 150

111 **75-5-211**, as last amended by Laws of Utah 1985, Chapter 41

112 **75-5-212**, as enacted by Laws of Utah 1975, Chapter 150

113 **75-5-301**, as last amended by Laws of Utah 1985, Chapter 41

114 **75-5-302**, as enacted by Laws of Utah 1975, Chapter 150

115 **75-5-303**, as last amended by Laws of Utah 1988, Chapter 104

116 **75-5-304**, as last amended by Laws of Utah 1988, Chapter 104

117 **75-5-305**, as last amended by Laws of Utah 1977, Chapter 194

118 **75-5-306**, as last amended by Laws of Utah 1977, Chapter 194

119 **75-5-307**, as last amended by Laws of Utah 1988, Chapter 104

120 **75-5-308**, as enacted by Laws of Utah 1975, Chapter 150

121 **75-5-309**, as last amended by Laws of Utah 1988, Chapter 104

122 **75-5-310**, as last amended by Laws of Utah 1979, Chapter 244

123 **75-5-311**, as last amended by Laws of Utah 1998, Chapter 288

124 **75-5-312**, as last amended by Laws of Utah 1992, Chapter 290

125        **75-5-313**, as last amended by Laws of Utah 1985, Chapter 41  
126        **75-5-316**, as last amended by Laws of Utah 2001, Chapter 73  
127        **75-5-401**, as last amended by Laws of Utah 2001, Chapter 375  
128        **75-5-402**, as last amended by Laws of Utah 1992, Chapter 30  
129        **75-5-403**, as last amended by Laws of Utah 1992, Chapter 30  
130        **75-5-404**, as enacted by Laws of Utah 1975, Chapter 150  
131        **75-5-405**, as enacted by Laws of Utah 1975, Chapter 150  
132        **75-5-406**, as enacted by Laws of Utah 1975, Chapter 150  
133        **75-5-407**, as enacted by Laws of Utah 1975, Chapter 150  
134        **75-5-408**, as enacted by Laws of Utah 1975, Chapter 150  
135        **75-5-409**, as last amended by Laws of Utah 1977, Chapter 194  
136        **75-5-411**, as last amended by Laws of Utah 1977, Chapter 194  
137        **75-5-412**, as enacted by Laws of Utah 1975, Chapter 150  
138        **75-5-413**, as enacted by Laws of Utah 1975, Chapter 150  
139        **75-5-414**, as enacted by Laws of Utah 1975, Chapter 150  
140        **75-5-415**, as enacted by Laws of Utah 1975, Chapter 150  
141        **75-5-416**, as enacted by Laws of Utah 1975, Chapter 150  
142        **75-5-417**, as last amended by Laws of Utah 2004, Chapter 89  
143        **75-5-418**, as enacted by Laws of Utah 1975, Chapter 150  
144        **75-5-419**, as enacted by Laws of Utah 1975, Chapter 150  
145        **75-5-420**, as last amended by Laws of Utah 1977, Chapter 194  
146        **75-5-421**, as enacted by Laws of Utah 1975, Chapter 150  
147        **75-5-422**, as enacted by Laws of Utah 1975, Chapter 150  
148        **75-5-423**, as enacted by Laws of Utah 1975, Chapter 150  
149        **75-5-424**, as last amended by Laws of Utah 1977, Chapter 194  
150        **75-5-425**, as last amended by Laws of Utah 1977, Chapter 194  
151        **75-5-426**, as enacted by Laws of Utah 1975, Chapter 150  
152        **75-5-427**, as last amended by Laws of Utah 1977, Chapter 194  
153        **75-5-428**, as last amended by Laws of Utah 2007, Chapter 306  
154        **75-5-429**, as enacted by Laws of Utah 1975, Chapter 150

155           **75-5-430**, as enacted by Laws of Utah 1975, Chapter 150  
156           **75-5-431**, as enacted by Laws of Utah 1975, Chapter 150  
157           **75-5-432**, as last amended by Laws of Utah 1977, Chapter 194  
158           **75-5-433**, as last amended by Laws of Utah 1977, Chapter 194

159

160   *Be it enacted by the Legislature of the state of Utah:*

161           Section 1. Section **53A-2-201** is amended to read:

162           **53A-2-201. Child's school district of residence -- Determination -- Responsibility**  
163   **for providing educational services.**

164           (1) The school district of residence of a minor child whose custodial parent or legal  
165   guardian resides within Utah is:

166           (a) the school district in which the custodial parent or legal guardian resides; or

167           (b) the school district in which the child resides:

168           (i) while in the custody or under the supervision of a Utah state agency;

169           (ii) while under the supervision of a private or public agency which is in compliance  
170   with Section 62A-4a-606 and is authorized to provide child placement services by the state;

171           (iii) while living with a responsible adult resident of the district, if a determination has  
172   been made in accordance with rules of the district board of education that:

173           (A) the child's physical, mental, moral, or emotional health would best be served by  
174   considering the child to be a resident for school purposes;

175           (B) exigent circumstances exist which would not permit the case to be appropriately  
176   addressed under Section 53A-2-207; and

177           (C) considering the child to be a resident of the district under this subsection would not  
178   violate any other law or rule of the State Board of Education; or

179           (iv) if the child is married or has been determined to be an emancipated minor by a  
180   court of law or by a state administrative agency authorized to make that determination.

181           (2) A minor child whose custodial parent or legal guardian does not reside in the state  
182   is considered to be a resident of the district in which the child lives, unless that designation  
183   violates any other law or rule of the State Board of Education, if:

184           (a) the child is married or an emancipated minor under Subsection (1)(b)(iv); or

185           ~~[(b) the child lives with a resident of the district who is a responsible adult and whom~~

the district agrees to designate as the child's legal guardian under Section 53A-2-202, or]

~~[(c)]~~ (b) if permissible under policies adopted by the local school board, it is established to the satisfaction of the local school board that:

(i) the child lives with a responsible adult who is a resident of the district and is the child's noncustodial parent, grandparent, brother, sister, uncle, ~~[or]~~ aunt, or any other responsible adult;

(ii) the child's presence in the district is not for the primary purpose of attending the public schools;

(iii) the child's physical, mental, moral, or emotional health would best be served by considering the child to be a resident for school purposes; and

(iv) the child is prepared to abide by the rules and policies of the school and school district in which attendance is sought.

(3) (a) If admission is sought under Subsection (1)(b)(iii), or (2)~~[(c)]~~(b), then the district may require the person with whom the child lives to be designated as the child's custodian in a durable power of attorney, issued by the party who has legal custody of the child, granting the custodian full authority to take any appropriate action, including authorization for educational or medical services, in the interests of the child.

(b) Both the party granting and the party empowered by the power of attorney shall agree to:

(i) assume responsibility for any fees or other charges relating to the child's education in the district; and

(ii) if eligibility for fee waivers is claimed under Section 53A-12-103, provide the school district with all financial information requested by the district for purposes of determining eligibility for fee waivers.

(c) Notwithstanding Section 75-5-103, a power of attorney meeting the requirements of this section and accepted by the school district shall remain in force until the earliest of the following occurs:

(i) the child reaches the age of 18, marries, or becomes emancipated;

(ii) the expiration date stated in the document; or

(iii) the power of attorney is revoked or rendered inoperative by the grantor or grantee, or by order of a court of competent jurisdiction.

(4) A power of attorney does not confer legal guardianship.

(5) Each school district is responsible for providing educational services for all children of school age who are residents of the district.

(6) Students who were enrolled in a Utah public school by October 1, 1992, and would, but for this part, have been allowed to attend public schools without payment of tuition shall be permitted to continue their attendance until graduation or termination of enrollment on the same basis as Utah resident students.

Section 2. Section **53A-2-203.5** is amended to read:

**53A-2-203.5. Recognition of guardianship.**

(1) A document issued by other than a court of law which purports to award guardianship to a person who is not a legal resident of the jurisdiction in which the guardianship is awarded is not valid in ~~[the]~~ this state ~~[of Utah]~~ until reviewed and approved by a ~~[Utah]~~ court in this state.

(2) The procedure for obtaining approval under Subsection (1) is the procedure required under Title 75, Chapter ~~[5]~~ 5c, Part 2, ~~[for obtaining a court appointment of a guardian]~~ Appointment of a Guardian for a Minor.

Section 3. Section **75-1-201** is amended to read:

**75-1-201. General definitions.**

Subject to additional definitions contained in the subsequent chapters that are applicable to specific chapters, parts, or sections, and unless the context otherwise requires, in this code:

(1) "Agent" includes an attorney-in-fact under a durable or nondurable power of attorney, an individual authorized to make decisions concerning another's health care, and an individual authorized to make decisions for another under a natural death act.

(2) "Application" means a written request to the registrar for an order of informal probate or appointment under Title 75, Chapter 3, Part 3, Informal Probate and Appointment Proceedings.

(3) "Beneficiary," as it relates to trust beneficiaries, includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer; as it relates to a charitable trust, includes any person entitled to enforce the trust; as it relates to a "beneficiary of a beneficiary designation," refers to a



beneficiary of an insurance or annuity policy, of an account with POD designation, of a security registered in beneficiary form (TOD), or of a pension, profit-sharing, retirement, or similar benefit plan, or other nonprobate transfer at death; and, as it relates to a "beneficiary designated in a governing instrument," includes a grantee of a deed, a devisee, a trust beneficiary, a beneficiary of a beneficiary designation, a donee, appointee, or taker in default of a power of appointment, and a person in whose favor a power of attorney or a power held in any individual, fiduciary, or representative capacity is exercised.

(4) "Beneficiary designation" refers to a governing instrument naming a beneficiary of an insurance or annuity policy, of an account with POD designation, of a security registered in beneficiary form (TOD), or of a pension, profit-sharing, retirement, or similar benefit plan, or other nonprobate transfer at death.

(5) "Child" includes any individual entitled to take as a child under this code by intestate succession from the parent whose relationship is involved and excludes any person who is only a stepchild, a foster child, a grandchild, or any more remote descendant.

(6) "Claims," in respect to estates of decedents and protected persons, includes liabilities of the decedent or protected person, whether arising in contract, in tort, or otherwise, and liabilities of the estate which arise at or after the death of the decedent or after the appointment of a conservator, including funeral expenses and expenses of administration. "Claims" does not include estate or inheritance taxes, or demands or disputes regarding title of a decedent or protected person to specific assets alleged to be included in the estate.

(7) "Conservator" means a person who is appointed by a court to manage the estate of a protected person.

(8) "Court" means any of the courts of record in this state having jurisdiction in matters relating to the affairs of decedents.

(9) "Descendant" of an individual means all of his descendants of all generations, with the relationship of parent and child at each generation being determined by the definition of child and parent contained in this title.

(10) "Devise," when used as a noun, means a testamentary disposition of real or personal property and, when used as a verb, means to dispose of real or personal property by will.

(11) "Devisee" means any person designated in a will to receive a devise. For the

purposes of Title 75, Chapter 3, Probate of Wills and Administration, in the case of a devise to an existing trust or trustee, or to a trustee in trust described by will, the trust or trustee is the devisee, and the beneficiaries are not devisees.

~~[(12)] "Disability" means cause for a protective order as described by Section 75-5-401.~~

~~[(13)]~~ (12) "Distributee" means any person who has received property of a decedent from his personal representative other than as a creditor or purchaser. A testamentary trustee is a distributee only to the extent of distributed assets or increment thereto remaining in his hands. A beneficiary of a testamentary trust to whom the trustee has distributed property received from a personal representative is a distributee of the personal representative. For purposes of this provision, "testamentary trustee" includes a trustee to whom assets are transferred by will, to the extent of the devised assets.

~~[(14)]~~ (13) "Estate" includes the property of the decedent, trust, or other person whose affairs are subject to this title as originally constituted and as it exists from time to time during administration.

~~[(15)]~~ (14) "Exempt property" means that property of a decedent's estate which is described in Section 75-2-403.

~~[(16)]~~ (15) "Fiduciary" includes a personal representative, guardian, conservator, and trustee.

~~[(17)]~~ (16) "Foreign personal representative" means a personal representative of another jurisdiction.

~~[(18)]~~ (17) "Formal proceedings" means proceedings conducted before a judge with notice to interested persons.

~~[(19)]~~ (18) "Governing instrument" means a deed, will, trust, insurance or annuity policy, account with POD designation, security registered in beneficiary form (TOD), pension, profit-sharing, retirement, or similar benefit plan, instrument creating or exercising a power of appointment or a power of attorney, or a dispositive, appointive, or nominative instrument of any similar type.

~~[(20)]~~ (19) "Guardian" means a person who has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment, or by written instrument as provided in Section 75-5-202.5, but excludes one who is merely a guardian ad litem.

310           ~~[(21)]~~ (20) "Heirs," except as controlled by Section 75-2-711, means persons, including  
311 the surviving spouse and state, who are entitled under the statutes of intestate succession to the  
312 property of a decedent.

313           ~~[(22)] "Incapacitated person" means any person who is impaired by reason of mental~~  
314 ~~illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic~~  
315 ~~intoxication, or other cause, except minority, to the extent of lacking sufficient understanding~~  
316 ~~or capacity to make or communicate responsible decisions.]~~

317           (21) "Incapacity," which is measured by functional limitations, means a judicial  
318 determination after proof by clear and convincing evidence that an adult's ability to do any of  
319 the following is so impaired that, even with assistance that the person is willing to accept,  
320 illness or physical or financial harm may occur:

321           (a) receive and evaluate information;

322           (b) make and communicate decisions;

323           (c) provide for necessities such as food, shelter, clothing, health care, or safety; or

324           (d) manage property.

325           ~~[(23)]~~ (22) "Informal proceedings" mean those conducted without notice to interested  
326 persons by an officer of the court acting as a registrar for probate of a will or appointment of a  
327 personal representative.

328           ~~[(24)]~~ (23) "Interested person" includes heirs, devisees, children, spouses, creditors,  
329 beneficiaries, and any others having a property right in or claim against a trust estate or the  
330 estate of a decedent~~[-ward,]~~ or protected person. It also includes persons having priority for  
331 appointment as personal representative, other fiduciaries representing interested persons, a  
332 settlor of a trust, if living, or the settlor's legal representative, if any, if the settlor is living but  
333 incapacitated. The meaning as it relates to particular persons may vary from time to time and  
334 shall be determined according to the particular purposes of, and matter involved in, any  
335 proceeding.

336           ~~[(25)]~~ (24) "Issue" of a person means descendant as defined in Subsection (9).

337           ~~[(26)]~~ (25) "Joint tenants with the right of survivorship" and "community property with  
338 the right of survivorship" includes coowners of property held under circumstances that entitle  
339 one or more to the whole of the property on the death of the other or others, but excludes forms  
340 of coownership registration in which the underlying ownership of each party is in proportion to

341 that party's contribution.

342 [(27)] (26) "Lease" includes an oil, gas, or other mineral lease.

343 [(28)] (27) "Letters" includes letters testamentary, letters of guardianship, letters of  
344 administration, and letters of conservatorship.

345 [(29)] (28) "Minor" means a person who is under 18 years of age.

346 [(30)] (29) "Mortgage" means any conveyance, agreement, or arrangement in which  
347 property is used as security.

348 [(31)] (30) "Nonresident decedent" means a decedent who was domiciled in another  
349 jurisdiction at the time of his death.

350 [(32)] (31) "Organization" includes a corporation, limited liability company, business  
351 trust, estate, trust, partnership, joint venture, association, government or governmental  
352 subdivision or agency, or any other legal or commercial entity.

353 [(33)] (32) "Parent" includes any person entitled to take, or who would be entitled to  
354 take if the child died without a will, as a parent under this code by intestate succession from the  
355 child whose relationship is in question and excludes any person who is only a stepparent, foster  
356 parent, or grandparent.

357 [(34)] (33) "Payor" means a trustee, insurer, business entity, employer, government,  
358 governmental agency or subdivision, or any other person authorized or obligated by law or a  
359 governing instrument to make payments.

360 [(35)] (34) "Person" means an individual or an organization.

361 [(36)] (35) (a) "Personal representative" includes executor, administrator, successor  
362 personal representative, special administrator, and persons who perform substantially the same  
363 function under the law governing their status.

364 (b) "General personal representative" excludes special administrator.

365 [(37)] (36) "Petition" means a written request to the court for an order after notice.

366 [(38)] (37) "Proceeding" includes action at law and suit in equity.

367 [(39)] (38) "Property" includes both real and personal property or any interest therein  
368 and means anything that may be the subject of ownership.

369 [(40)] (39) "Protected person" means a person for whom a guardian or a conservator  
370 has been appointed~~[-A "minor protected person" means a minor for whom a conservator has~~  
371 ~~been appointed because of minority]~~ or a protective order entered, including a minor.

372           ~~[(41)]~~ (40) "Protective proceeding" means a proceeding ~~[described in Section~~  
373 ~~75-5-401]~~ under Title 75, Chapter 5c, Utah Protective Proceedings Act.

374           ~~[(42)]~~ (41) "Record" means information that is inscribed on a tangible medium or that  
375 is stored in an electronic or other medium and is retrievable in perceivable form.

376           ~~[(43)]~~ (42) "Registrar" refers to the official of the court designated to perform the  
377 functions of registrar as provided in Section 75-1-307.

378           ~~[(44)]~~ (43) "Security" includes any note, stock, treasury stock, bond, debenture,  
379 evidence of indebtedness, certificate of interest, or participation in an oil, gas, or mining title or  
380 lease or in payments out of production under such a title or lease, collateral trust certificate,  
381 transferable share, voting trust certificate, and, in general, any interest or instrument commonly  
382 known as a security, or any certificate of interest or participation, any temporary or interim  
383 certificate, receipt, or certificate of deposit for, or any warrant or right to subscribe to or  
384 purchase, any of the foregoing.

385           ~~[(45)]~~ (44) "Settlement," in reference to a decedent's estate, includes the full process of  
386 administration, distribution, and closing.

387           ~~[(46)]~~ (45) "Sign" means, with present intent to authenticate or adopt a record other  
388 than a will:

389           (a) to execute or adopt a tangible symbol; or

390           (b) to attach to or logically associate with the record an electronic symbol, sound, or  
391 process.

392           ~~[(47)]~~ (46) "Special administrator" means a personal representative as described in  
393 Sections 75-3-614 through 75-3-618.

394           ~~[(48)]~~ (47) "State" means a state of the United States, the District of Columbia, the  
395 Commonwealth of Puerto Rico, any territory or insular possession subject to the jurisdiction of  
396 the United States, or a Native American tribe or band recognized by federal law or formally  
397 acknowledged by a state.

398           ~~[(49)]~~ (48) "Successor personal representative" means a personal representative, other  
399 than a special administrator, who is appointed to succeed a previously appointed personal  
400 representative.

401           ~~[(50)]~~ (49) "Successors" means persons, other than creditors, who are entitled to  
402 property of a decedent under the decedent's will or this title.

403           [(51)] (50) "Supervised administration" refers to the proceedings described in Title 75,  
404 Chapter 3, Part 5, Supervised Administration.

405           [(52)] (51) "Survive," except for purposes of Part 3 of Article VI, Uniform TOD  
406 Security Registration Act, means that an individual has neither predeceased an event, including  
407 the death of another individual, nor is considered to have predeceased an event under Section  
408 75-2-104 or 75-2-702. The term includes its derivatives, such as "survives," "survived,"  
409 "survivor," and "surviving."

410           [(53)] (52) "Testacy proceeding" means a proceeding to establish a will or determine  
411 intestacy.

412           [(54)] (53) "Testator" includes an individual of either sex.

413           [(55)] (54) "Trust" includes a health savings account, as defined in Section 223,  
414 Internal Revenue Code, any express trust, private or charitable, with additions thereto,  
415 wherever and however created. The term also includes a trust created or determined by  
416 judgment or decree under which the trust is to be administered in the manner of an express  
417 trust. The term excludes other constructive trusts, and it excludes resulting trusts,  
418 conservatorships, personal representatives, trust accounts as defined in Title 75, Chapter 6,  
419 Nonprobate Transfers, custodial arrangements pursuant to any Uniform Transfers To Minors  
420 Act, business trusts providing for certificates to be issued to beneficiaries, common trust funds,  
421 voting trusts, preneed funeral plans under Title 58, Chapter 9, Funeral Services Licensing Act,  
422 security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts,  
423 dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind, and any  
424 arrangement under which a person is nominee or escrowee for another.

425           [(56)] (55) "Trustee" includes an original, additional, and successor trustee, and  
426 cotrustee, whether or not appointed or confirmed by the court.

427           [(57)] ~~"Ward" means a person for whom a guardian has been appointed. A "minor~~  
428 ~~ward" is a minor for whom a guardian has been appointed solely because of minority.]~~

429           [(58)] (46) "Will" includes codicil and any testamentary instrument which merely  
430 appoints an executor, revokes or revises another will, nominates a guardian, or expressly  
431 excludes or limits the right of an individual or class to succeed to property of the decedent  
432 passing by intestate succession.

433           Section 4. Section **75-1-401** is amended to read:

**75-1-401. Notice -- Method and time of giving.**

(1) If notice of a hearing on any petition is required and except for specific notice requirements as otherwise provided, the petitioner shall cause notice of the time and place of hearing of any petition to be given to any interested person or the person's attorney if the person has appeared by attorney or requested that notice be sent to the person's attorney. Notice shall be given by the clerk posting a copy of the notice for the 10 consecutive days immediately preceding the time set for the hearing in at least three public places in the county, one of which ~~[must]~~ shall be at the courthouse of the county and~~[-]~~ one of which may be on the Utah State Courts' website; and

(a) ~~[(i)]~~ by the clerk mailing a copy ~~[thereof]~~ of the notice at least 10 days before the time set for the hearing by certified, registered, or ordinary first class mail addressed to the person being notified at the post-office address given in the demand for notice, if any, or at the person's office or place of residence, if known; or

~~[(ii)]~~ (b) by delivering a copy ~~[thereof]~~ of the notice to the person being notified personally at least 10 days before the time set for the hearing; and

~~[(b)]~~ (c) if the address, or identity of any person is not known and cannot be ascertained with reasonable diligence, by publishing~~[-(i)]~~ the notice at least once a week for three consecutive weeks ~~[a copy thereof]~~ in a newspaper having general circulation in the county where the hearing is to be held, the last publication of which is to be at least 10 days before the time set for the hearing; and

(ii) on the Utah Public Notice Website created in Section 63F-1-701, for three weeks.

(2) The court for good cause shown may provide for a different method or time of giving notice for any hearing.

(3) Proof of the giving of notice shall be made on or before the hearing and filed in the proceeding.

Section 5. Section **75-5-501** is amended to read:

**75-5-501. Power of attorney not affected by disability or lapse of time -- Agent responsibilities.**

(1) Whenever a principal designates another his attorney-in-fact or agent by a power of attorney in writing and the writing contains the words "This power of attorney shall not be affected by disability of the principal," or "This power of attorney shall become effective upon

the disability of the principal," or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding his disability, the authority of the attorney-in-fact or agent is exercisable by him as provided in the power on behalf of the principal notwithstanding:

(a) later disability or incapacity of the principal at law or later uncertainty as to whether the principal is dead or alive; or

(b) the lapse of time since the execution of the instrument, unless the instrument states a time of termination.

(2) If an attorney-in-fact or agent determines that the principal has become incapacitated or disabled and the power of attorney by its terms remains in effect or becomes effective as a result of a principal's incapacity or disability, the attorney-in-fact or agent shall:

(a) notify all interested persons of his status as the power of attorney holder within 30 days of the principal's incapacitation, and provide them with his name and address;

(b) provide to any interested persons upon written request, a copy of the power of attorney;

(c) provide to any interested persons upon written request, an annual accounting of the assets to which the power of attorney applies, unless the power of attorney specifically directs that the attorney-in-fact or agent is not required to do so; and

(d) notify all interested persons upon the death of the principal.

(3) All interested persons shall be notified within 10 days if the attorney-in-fact or agent changes. The notification shall be made by the new attorney-in-fact or agent who shall then be accountable to the interested persons in accordance with Subsection (2).

(4) All acts done by the attorney-in-fact or agent pursuant to the power during any period of disability or incompetence or uncertainty as to whether the principal is dead or alive have the same effect and inure to the benefit of and bind the principal or his heirs, devisees, and personal representative as if the principal were alive, competent, and not disabled, except as provided in Section 75-5-503.

(5) A conservator may be appointed for a principal even though the principal has a valid power of attorney in place. If a conservator thereafter is appointed for the principal, the attorney-in-fact or agent, during the continuance of the appointment, shall account to the conservator rather than the principal. The conservator, pursuant to court order [as provided in



Subsection ~~75-5-408(1)(d)~~], has the same power the principal would have had if he were not disabled or incompetent to revoke, suspend, or terminate all or any part of the power of attorney or agency.

(6) For the purposes of this section, "interested person" means any person entitled to a part of the principal's estate from the principal's will or through the intestacy laws, whichever is applicable.

Section 6. Section **75-5b-102** is amended to read:

**75-5b-102. Definitions.**

In this chapter:

(1) "Adult" means an individual who has attained 18 years of age.

~~[(2) "Conservator" means a person appointed by the court to administer the property of an adult, including a person appointed under Title 75, Chapter 5, Part 4, Protection of Property of Persons Under Disability and Minors.]~~

~~[(3)]~~ (2) "Emergency" means circumstances that likely will result in substantial harm to a respondent's health, safety, estate, or welfare, and in which the appointment of a guardian is necessary because no other person has authority to and is willing to act on the respondent's behalf.

~~[(4) "Guardian" means a person appointed by the court to make decisions regarding the person of an adult, including a person appointed under Title 75, Chapter 5, Part 3, Guardians of Incapacitated Persons.]~~

~~[(5)]~~ (3) "Guardianship order" means an order appointing a guardian.

~~[(6)]~~ (4) "Guardianship proceeding" means a proceeding in which an order for the appointment of a guardian is sought or has been issued.

~~[(7)]~~ (5) "Home state" means the state in which the respondent was physically present for at least six consecutive months immediately before the filing of a petition for the appointment of a guardian or protective order. A period of temporary absence counts as part of the six-month period.

~~[(8) "Incapacitated person" means an adult for whom a guardian has been appointed.]~~

~~[(9)]~~ (6) "Party" means the respondent, petitioner, guardian, conservator, or any other person allowed by the court to participate in a guardianship or protective proceeding.

~~[(10)]~~ (7) "Person," except in the terms "incapacitated person" or "protected person,"

means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government or governmental subdivision, agency or instrumentality, public corporation, or any other legal or commercial entity.

~~[(11)] "Protected person" means an adult for whom a protective order has been made.]~~

~~[(12)]~~ (8) "Protective order" means an order appointing a conservator or another court order related to management of an adult's property.

~~[(13)] "Protective proceeding" means a judicial proceeding in which a protective order is sought or has been issued.]~~

~~[(14)]~~ (9) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

~~[(15)]~~ (10) "Respondent" means an adult for whom a protective order or the appointment of a guardian or conservator is sought.

~~[(16)]~~ (11) "Significant-connection state" means a state, other than the home state, with which a respondent has a significant connection other than mere physical presence and in which substantial evidence concerning the respondent is available.

~~[(17)]~~ (12) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States.

Section 7. Section **75-5b-302** is amended to read:

**75-5b-302. Accepting guardianship or conservatorship transferred from another state.**

(1) To confirm transfer of a guardianship or conservatorship transferred to this state under provisions similar to Section 75-5b-301, the guardian or conservator shall petition the court in this state to accept the guardianship or conservatorship. The petition shall include a certified copy of the other state's provisional order of transfer.

(2) Notice of a petition under Subsection (1) shall be given by the petitioner to those persons who would be entitled to notice if the petition were a petition for the appointment of a guardian or issuance of a protective order in both the transferring state and this state. The notice shall be given in the same manner as notice is given in this state.

(3) On the court's own motion or on request of the incapacitated or protected person, or other person required to be notified of the proceeding, the court shall hold a hearing on a

558 petition filed pursuant to Subsection (1).

559 (4) The court shall issue an order provisionally granting a petition filed under  
560 Subsection (1) unless:

561 (a) an objection is made and the objector establishes that transfer of the proceeding  
562 would be contrary to the interests of the incapacitated or protected person; or

563 (b) the guardian or conservator is ineligible for appointment in this state.

564 (5) The court shall issue a final order accepting the proceeding and appointing the  
565 guardian or conservator as guardian or conservator in this state upon its receipt from the court  
566 from which the proceeding is being transferred of a final order issued under provisions similar  
567 to Section 75-5b-301 transferring the proceeding to this state.

568 (6) Not later than 90 days after issuance of a final order accepting transfer of a  
569 guardianship or conservatorship, the court shall determine whether the guardianship or  
570 conservatorship needs to be modified to conform to the law of this state.

571 (7) In granting a petition under this section, the court shall recognize a guardianship or  
572 conservatorship order from the other state, including the determination of the incapacitated or  
573 protected person's incapacity and the appointment of the guardian or conservator.

574 (8) The denial by a court of this state of a petition to accept a guardianship or  
575 conservatorship transferred from another state does not affect the ability of the guardian or  
576 conservator to seek appointment as guardian or conservator in this state under Title 75, Chapter  
577 ~~[5, Part 3, Guardians of Incapacitated Persons]~~ 5c, Utah Protective Proceedings Act, if the  
578 court has jurisdiction to make an appointment other than by reason of the provisional order of  
579 transfer.

580 Section 8. Section **75-5c-101** is enacted to read:

581 **CHAPTER 5c. UTAH PROTECTIVE PROCEEDINGS ACT**

582 **Part 1. General Provisions**

583 **75-5c-101. Title.**

584 This chapter is known as the "Utah Protective Proceedings Act."

585 Section 9. Section **75-5c-102** is enacted to read:

586 **75-5c-102. Definitions.**

587 As used in this chapter:

588 (1) "Best interest decision making standard" means the guardian or conservator, after

considering the protected person's expressed wishes, makes the decision that is the least intrusive, least restrictive, and most normalizing course of action to accommodate the protected person's particular functional limitations. Best interest is the standard used when:

(a) following the protected person's wishes would cause the person harm;

(b) the guardian or conservator cannot determine the protected person's wishes; or

(c) the protected person has never had capacity.

(2) "Court" means the district court.

(3) "Health care" and "health care decisions" mean the same as in Section 75-2a-103.

(4) "Legal representative" includes a guardian or conservator acting for a protected person in this state or elsewhere, a trustee or custodian of a trust or custodianship of which the protected person is a beneficiary, an attorney, guardian ad litem, representative payee, and an agent designated under a power of attorney in which the protected person is the principal.

(5) "Professional conservator" means a trust company permitted by the commissioner of financial institutions under Subsection 7-5-2(1) to accept an appointment to act in an agency or fiduciary capacity.

(6) "Professional guardian" means a person who has been certified as a registered guardian or master guardian by the National Guardianship Association.

(7) "Respondent" means an individual for whom a guardian, conservator, or protective order is sought.

(8) "Substituted judgment decision making standard" means the guardian or conservator makes the decision that the protected person would have made when competent. Substituted judgment is the standard used in all circumstances except those that permit the best interest decision making standard to be used.

Section 10. Section **75-5c-103** is enacted to read:

**75-5c-103. Incapacity -- Findings -- Factors.**

(1) "Incapacity" has the same meaning as in Section 75-1-201.

(2) The court shall enter findings in which the court identifies the functional limitations that cause the respondent to be incapacitated. In deciding whether the respondent is incapacitated, the court should consider and weigh, as appropriate:

(a) whether the respondent's condition, limitations, and level of functioning leave the respondent at risk of:

(i) their property being dissipated;

(ii) being unable to provide for their own support, or for the support of individuals entitled to the respondent's support;

(iii) being financially exploited;

(iv) being abused or neglected, including self-injurious behavior or self-neglect; or

(v) having their rights violated;

(b) whether the respondent has a physical or mental illness, disability, condition, or syndrome and the prognosis;

(c) whether the respondent is able to evaluate the consequences of alternative decisions;

(d) whether the respondent can manage the activities of daily living through training, education, support services, mental and physical health care, medication, therapy, assistants, assistive devices, or other means that the respondent will accept;

(e) the nature and extent of the demands placed on the respondent by the need for care;

(f) the nature and extent of the demands placed on the respondent by their property;

(g) the consistency of the respondent's behavior with their long-standing values, preferences, and patterns of behavior; and

(h) other relevant factors.

Section 11. Section **75-5c-104** is enacted to read:

**75-5c-104. Transfer of property to or on behalf of a minor.**

(1) Unless the person knows that a conservator has been appointed for a minor or that a proceeding to appoint a conservator is pending, a person required to transfer money or personal property to a minor may transfer up to \$50,000 per year to:

(a) the minor, if the minor is married or emancipated or if payment to the minor is authorized by statute;

(b) the minor's guardian;

(c) the minor's custodian under Title 75, Chapter 5a, Uniform Transfers to Minors Act;

(d) a person responsible for the minor's care and custody with whom the minor resides;  
or

(e) a financial institution for deposit in an interest-bearing account or certificate in the minor's sole name and giving notice of the deposit to the minor.

(2) A person who transfers money or property in compliance with this section is not responsible for its proper application.

(3) A custodian, guardian, or a person responsible for the minor's care and custody who receives money or property for a minor shall apply it to the minor's support, care, education, health, and welfare and may not derive a personal financial benefit, except for reimbursement for necessary expenses. Any excess shall be preserved for the minor's future support, care, education, health, and welfare. Any balance shall be transferred to the minor upon emancipation or majority.

(4) A person receiving money under this section on behalf of a minor has the power to settle and release in whole or in part the claims belonging to the minor giving rise to the duty to pay money to the minor.

Section 12. Section **75-5c-105** is enacted to read:

**75-5c-105. Delegation of authority by parent or guardian.**

A parent or guardian of a minor or protected person may delegate to another person any authority regarding care, custody, or property of the minor or protected person except the authority to consent to marriage or adoption. The delegation shall be by a properly executed power of attorney and may not exceed six months.

Section 13. Section **75-5c-106** is enacted to read:

**75-5c-106. Venue -- Transfer of venue.**

(1) Venue for a proceeding under this chapter is:

(a) in the county in which the respondent resides or is present at the time the proceeding is commenced;

(b) in the county in which the will is or could be probated, if the guardian or conservator is nominated by will;

(c) in the county of the court that committed the respondent under Title 62A, Chapter 5, Part 3, Admission to Mental Retardation Facility or under Title 62A, Chapter 15, Part 6, Utah State Hospital and Other Mental Health Facilities; or

(d) in the county in which property of the respondent is located, if the petition is to appoint a conservator or for a protective order and the respondent does not reside in this state.

(2) If a proceeding is brought in more than one county, the court of the county in which the proceeding is first brought has the exclusive right to proceed unless that court determines

that venue is proper in another county and that the interests of justice require that the proceeding be transferred.

(3) The court that appoints a guardian or conservator or enters a protective order retains venue for proceedings after the appointment or order unless that court determines that venue is proper in another county and that the interests of justice require that the proceeding be transferred.

Section 14. Section **75-5c-107** is enacted to read:

**75-5c-107. Appointment and status of guardian or conservator.**

(1) A person becomes guardian or a conservator upon acceptance of a court appointment.

(2) A guardianship, conservatorship, or entry of a protective order continues until terminated by court order.

(3) Acceptance of a testamentary appointment as guardian under a will probated in the state of the testator's domicile is effective in this state.

Section 15. Section **75-5c-110** is enacted to read:

**75-5c-110. Acceptance of appointment.**

(1) The guardian or conservator has authority to act upon filing an acceptance of appointment. A guardian or conservator shall file an acceptance of appointment within 30 days after the later of:

(a) entry of the order of appointment; or

(b) the occurrence of a future event designated in the appointment order.

(2) By accepting appointment, a guardian or conservator submits personally to the jurisdiction of the court in any proceeding relating to the guardianship or conservatorship.

(3) If a person nominated by will or signed writing timely complies with Section 75-5c-201, 75-5c-301, or 75-5c-401, the nominee's acts before acceptance of the appointment that are beneficial to the respondent have the same effect as those that occur after acceptance.

Section 16. Section **75-5c-111** is enacted to read:

**75-5c-111. Letters of office.**

(1) The court shall issue appropriate letters of office to the guardian or conservator. The letters shall state the authority of the guardian or conservator and the property subject to the guardian's or conservator's possession, ownership, or control.

(2) Letters of office are evidence of title to the protected person's property and may be filed or recorded to give notice of title.

Section 17. Section **75-5c-112** is enacted to read:

**75-5c-112. Nominating a guardian or conservator.**

(1) A person 14 years of age or older may nominate a person to be appointed as guardian or conservator for oneself, for one's spouse, or for one's child whom the parent has or may have in the future by will, durable power of attorney, or other signed writing that:

(a) identifies the nominee and the office for which the nominee is nominated; and

(b) shows that the person is of sound mind and not acting under duress, fraud, or undue influence.

(2) The respondent may nominate someone orally at the hearing if the respondent is 14 years of age or older and has sufficient capacity to express a preference.

(3) The nomination may specify desired limitations on the authority to be given to the guardian or conservator.

(4) The person may revoke or amend the nomination before it is confirmed by the court.

Section 18. Section **75-5c-113** is enacted to read:

**75-5c-113. Petition to confirm nomination -- Notice -- Authority to act.**

(1) A person who nominates someone to be appointed as guardian or conservator may petition to confirm the nomination if the nominator will likely become incapacitated or unable to care for the respondent within two years.

(2) If no objection is filed within the time permitted or if an objection is filed and withdrawn, the court shall confirm the nomination and cut off the right of others to object if it finds that the nomination is in the respondent's best interest and the nominator will likely become incapacitated or unable to care for the respondent within two years.

(3) If an objection is filed, the court shall conduct proceedings to hear and determine the priority of appointment under Section 75-5c-114. An objection does not preclude confirmation of the nominee.

(4) An order under this section appoints a contingent guardian or conservator but does not determine the respondent's incapacity.

Section 19. Section **75-5c-114** is enacted to read:



**75-5c-114. Who may be guardian or conservator -- Priority.**

(1) The court may appoint as guardian or conservator any person whose appointment would be in the respondent's best interest.

(2) In appointing a guardian or conservator, the court shall consider qualified persons in the following order of priority, unless the court finds the appointment would be contrary to the respondent's best interest:

(a) a guardian or conservator, other than a substitute or emergency guardian or conservator, currently acting for the respondent in this state or elsewhere or a person nominated by that person;

(b) the respondent's nominee, if the respondent is 14 years of age or older and at the time of the nomination the respondent had sufficient capacity to express a preference;

(c) the respondent's agent appointed under Title 75, Chapter 2a, Advance Health Care Directive Act or Title 75, Chapter 5, Part 5, Powers of Attorney;

(d) the respondent's spouse or a person nominated by a deceased spouse;

(e) the respondent's adult child or a person nominated by a deceased adult child;

(f) the respondent's parent or a person nominated by a deceased parent;

(g) an adult with whom the respondent has resided for more than six months;

(h) an adult who has shown special care and concern for the respondent; and

(i) a professional guardian or conservator.

(3) If a person nominates more than one guardian or conservator, the most recent nomination controls.

(4) If two or more people who have equal priority to nominate a guardian or conservator are dead or incapacitated, the most recent nomination by the last person to die or to be adjudicated incapacitated has priority.

(5) If two or more people have equal priority, the court may select the one most qualified. In the best interest of the respondent, the court may decline to appoint a person having a higher priority and appoint a person having a lower priority or no priority.

(6) An owner, operator, or employee of a long-term care institution at which the respondent is receiving care may not be appointed guardian or conservator unless related to the respondent by blood, marriage, or adoption.

(7) The nomination of a guardian or conservator by a parent does not supersede the

775 parental rights of either parent.

776 Section 20. Section **75-5c-115** is enacted to read:

777 **75-5c-115. Successor -- Additional or contingent guardian or conservator.**

778 The court may appoint more than one guardian or conservator. The court may appoint a  
779 guardian or conservator to serve immediately or upon the occurrence of some future designated  
780 event. The court may appoint a successor guardian or conservator to serve in the event of a  
781 vacancy. Unless otherwise stated, a successor succeeds to the predecessor's duties, authority,  
782 and title to property.

783 Section 21. Section **75-5c-116** is enacted to read:

784 **75-5c-116. Termination -- Resignation or removal.**

785 (1) A guardianship or conservatorship terminates upon court order.

786 (2) The court may accept the resignation or order the removal of the guardian or  
787 conservator upon finding that resignation or removal would be in the protected person's best  
788 interest.

789 (3) The court may terminate the guardianship, conservatorship, or protective order  
790 upon sufficient evidence that:

791 (a) the protected person has died;

792 (b) the minor protected person has been adopted, is emancipated, or has attained  
793 majority; or

794 (c) the protected person no longer needs the assistance or protection of a guardian,  
795 conservator, or protective order.

796 (4) Upon presentation of evidence establishing a prima facie case for termination, the  
797 court shall order termination, unless it is proven by clear and convincing evidence that  
798 continuation of the guardianship or conservatorship is in the protected person's best interest.

799 (5) Termination of the guardianship or conservatorship or death, incapacity,  
800 resignation, or removal of the guardian or conservator does not affect the liability of a guardian  
801 or conservator for previous acts or the obligation to account for the protected person's property.

802 (6) Upon termination of the guardianship or conservatorship, title to the protected  
803 person's property passes to the person or their successors. An order terminating the  
804 guardianship or conservatorship may be filed or recorded to give notice of title to the property.  
805 The order terminating the guardianship or conservatorship shall provide for expenses of

administration and direct the guardian or conservator to execute appropriate instruments to evidence transfer of title, to confirm a distribution previously made, and to file a final report.

(7) The court shall enter a final discharge order upon the approval of the final report and satisfaction of any other conditions ordered by the court.

Section 22. Section **75-5c-117** is enacted to read:

**75-5c-117. Emergency appointment.**

(1) The court may appoint an emergency guardian or conservator if the court finds that:

(a) following the procedures of this chapter would likely result in substantial harm to the respondent's health, safety, or welfare;

(b) no other person appears to have authority to act;

(c) the welfare of the respondent requires immediate action; and

(d) the appointment would be in the respondent's best interest.

(2) The court may appoint an emergency guardian or conservator ex parte if it finds that the respondent will be substantially harmed before a hearing can be held. If the respondent is not represented by an attorney, the court shall appoint an attorney to represent the respondent.

(3) The petition and notice of the hearing shall be served using the method most likely to give prompt actual notice. If an emergency guardian or conservator is appointed without notice and hearing, notice of the appointment shall be served within two days after the appointment and a hearing on the appropriateness of the appointment shall be held within five days after the appointment.

(4) Appointment of an emergency guardian or conservator is not a determination of the respondent's incapacity.

(5) After a hearing, the court may appoint an emergency guardian or conservator for a specified period not to exceed 60 days, and the court may remove an emergency guardian or conservator at any time. The appointment terminates on the date specified by the court.

(6) The court may order only the authority justified by the emergency. The emergency guardian or conservator may exercise only the authority specified in the order. The emergency guardian or conservator shall make any report the court requires. The provisions of this chapter concerning guardians or conservators apply to an emergency guardian or conservator.

Section 23. Section **75-5c-118** is enacted to read:

**75-5c-118. Substitute appointment.**

(1) The court may appoint a substitute guardian or conservator if it finds that:

(a) the guardian or conservator is not effectively exercising authority or performing duties;

(b) the protected person's welfare requires immediate action; and

(c) the appointment would be in the protected person's best interests.

(2) The court may appoint a substitute guardian or conservator ex parte if it finds that the respondent will be substantially harmed before a hearing can be held. Unless the respondent is represented by a lawyer, the court shall appoint a lawyer to represent the respondent.

(3) The petition and notice of the hearing shall be served using the method most likely to give prompt actual notice. If a substitute guardian or conservator is appointed without notice and hearing, notice of the appointment shall be served within two days after the appointment and a hearing on the appropriateness of the appointment must be held within five days after the appointment.

(4) After the hearing, the court may appoint a substitute guardian or conservator for a specified period not to exceed six months, and the court may remove a substitute guardian or conservator at any time.

(5) Except as ordered by the court, a substitute guardian or conservator has the authority and duties in the previous order of appointment. The authority of a previously appointed guardian or conservator is suspended as long as a substitute guardian or conservator has authority.

(6) A substitute guardian or conservator shall make any report the court requires. The provisions of this chapter concerning guardians and conservators apply to a substitute guardian or conservator.

Section 24. Section **75-5c-119** is enacted to read:

**75-5c-119. Proceedings after appointment.**

(1) After appointing a guardian or conservator or entering a protective order, the court may:

(a) require, increase, or decrease a bond or collateral;

(b) require a report from the guardian or conservator;

(c) direct distribution;

(d) instruct the guardian or conservator concerning a fiduciary responsibility;

(e) modify the authority of the guardian or conservator because authority previously granted is excessive or insufficient or because of a change in the protected person's incapacity;

(f) permit or deny the guardian or conservator to exercise authority requiring a court order;

(g) terminate the guardianship or conservatorship;

(h) remove a guardian or conservator;

(i) accept the resignation of a guardian or conservator;

(j) appoint a substitute guardian or conservator;

(k) appoint a successor or additional guardian or conservator;

(l) find the guardian or conservator in contempt for:

(i) violating a fiduciary responsibility imposed by statute, rule, or court order; or

(ii) decisions or acts by the guardian or conservator that the court finds to be substantially contrary to the management plan;

(m) approve a management plan; or

(n) grant other appropriate relief.

(2) A protected person or person interested in the welfare of the protected person may file a petition or a motion under the Utah Rules of Civil Procedure for an order under this section.

(3) A protected person is entitled to the same rights and procedures in proceedings under this section as in an original proceeding, including the appointment of an attorney.

(4) Sanctions for contempt of court include removal of the guardian or conservator and imposing on the guardian or conservator personal responsibility for any financial loss caused by the guardian's or conservator's wrongful conduct.

Section 25. Section **75-5c-120** is enacted to read:

**75-5c-120. Guardian ad litem.**

At any stage of a protective proceeding, a court may appoint a guardian ad litem if the court determines that representation of the interests of the respondent or protected person is inadequate. If not precluded by a conflict of interest, a guardian ad litem may be appointed to represent several individuals. The court shall state on the record the duties of the guardian ad

899 litem and its reasons for the appointment.

900 Section 26. Section **75-5c-121** is enacted to read:

901 **75-5c-121. Bonds.**

902 (1) Subject to the provisions of Title 7, Financial Institutions Act, relating to the  
903 bonding requirements for corporate fiduciaries, the court may require a guardian or conservator  
904 to furnish a bond with sureties as it may specify conditioned upon faithful discharge of all  
905 fiduciary responsibilities.

906 (2) Unless otherwise directed, the bond must be in the amount of:

907 (a) the aggregate capital value of the protected person's property subject to the  
908 guardian's or conservator's possession, ownership, or control; plus

909 (b) one year's estimated income; minus

910 (c) the value of assets deposited under arrangements requiring a court order for  
911 removal and the value of any real property that the guardian or conservator, by express  
912 limitation, lacks authority to sell or convey without court authorization.

913 (3) The court may dispense with the bond for good cause. Instead of sureties, the court  
914 may accept collateral for the performance of the bond, including a pledge of securities or a  
915 mortgage of real property.

916 (4) Unless otherwise provided by the terms of the bond, the sureties and the guardian  
917 or conservator are jointly and severally liable.

918 (5) By executing the bond, the surety consents to the jurisdiction of the court in any  
919 proceeding about the guardian's or conservator's fiduciary responsibilities in which the surety is  
920 named as a party. Notice of the proceeding and a copy of any petition, motion, or other paper  
921 shall be served on the surety under Utah Rules of Civil Procedure, Rule 5, at the address shown  
922 in the court records and at any other address known to the petitioner.

923 (6) If a proceeding against the primary obligor is not barred, a proceeding may be  
924 brought by a conservator, successor conservator, or any interested person against a surety for  
925 breach of the obligation of the bond. The bond may be proceeded against until liability under  
926 the bond is exhausted.

927 Section 27. Section **75-5c-122** is enacted to read:

928 **75-5c-122. Compensation for services and reimbursement of expenses.**

929 (1) If not otherwise paid and if payment does not deprive the protected person or

individuals entitled to the protected person's support of food, shelter, clothing, and other necessities, the following are entitled to reasonable payment from the estate for services and expenses:

(a) the respondent's or protected person's attorney, guardian ad litem, guardian, and conservator;

(b) the petitioner's attorney, if the petition results in the appointment of a guardian or conservator, the entry of a protective order, or the entry of any other order that benefits the protected person; and

(c) any person appointed by the court.

(2) To qualify for payment, the petition shall be filed or the service provided in good faith, be reasonable and necessary, be conducted responsibly, and benefit the respondent or protected person.

(3) Claims for compensation and reimbursement shall be presented to the conservator, if one has been appointed. If there is no conservator, or if the conservator is the person to be paid, someone affiliated with the person to be paid, or someone within the third degree of relationship to the person to be paid, the compensation or reimbursement may be approved by the court. In allowing the claim, the conservator or court may consider the complexity of the service, the provider's experience, and any other relevant factor.

(4) If the court finds the petition is without merit, the petitioner shall pay for the services and expenses in Subsection (1).

(5) If the court determines that the payments are excessive or inappropriate, the excessive or inappropriate amount shall be repaid to the estate.

Section 28. Section **75-5c-123** is enacted to read:

**75-5c-123. Fiduciary's personal funds.**

A guardian or conservator has no legal obligation to use the guardian's or conservator's personal funds for the protected person's expenses solely by reason of the guardianship or conservatorship.

Section 29. Section **75-5c-124** is enacted to read:

**75-5c-124. Monitoring appointments.**

The court shall establish a system for monitoring guardians and conservators, including their reports. The court may appoint a visitor to review records of or any report filed by a

guardian or conservator. The court may appoint a visitor to interview the protected person, the guardian, or the conservator and to make any other investigation the court directs. The court may order a guardian, or conservator to submit the assets subject to the guardian's or conservator's possession, ownership, or control to an examination made in a manner the court directs.

Section 30. Section **75-5c-125** is enacted to read:

**75-5c-125. Liability on reported matters.**

An order, after notice, approving an intermediate report of a guardian or conservator adjudicates liabilities concerning matters adequately disclosed in the report. An order, after notice, approving a final report adjudicates all previously unsettled liabilities relating to the guardianship or conservatorship adequately disclosed in the report.

Section 31. Section **75-5c-201** is enacted to read:

**Part 2. Appointment of a Guardian for a Minor**

**75-5c-201. Petition to appoint a guardian for a minor -- Findings -- Procedures.**

(1) A minor or a person interested in the minor's welfare may file a verified petition to appoint a guardian. If the petitioner is nominated by will or signed writing, the petitioner shall file the petition and a copy of the will or signed writing within 30 days after:

(a) the nominator's death;

(b) the nominator's adjudicated incapacity; or

(c) a written determination by a physician who has examined the nominator that the nominator is no longer able to care for the minor.

(2) Upon receipt of a petition to appoint a guardian, the court shall schedule a hearing on the petition.

(3) The court shall appoint a guardian if it finds that:

(a) the appointment is in the respondent's best interests;

(b) a qualified person seeks appointment;

(c) the court has jurisdiction and venue is proper;

(d) the required notices have been given; and

(e) (i) the parents consent to the appointment;

(ii) all parental rights have been terminated; or

(iii) the parents are unwilling or unable to exercise their parental rights.



992           (4) The court may appoint a guardian for a specified period of time. The guardian may  
993 not serve past the respondent's 18th birthday.

994           (5) In other cases, the court may dismiss the petition or make any other disposition that  
995 will serve the respondent's best interests.

996           (6) If the court determines that the respondent's best interests are or may be  
997 inadequately represented, it may appoint an attorney to represent the respondent, giving  
998 consideration to the respondent's choice if the respondent is 14 years of age or older.

999           Section 32. Section **75-5c-202** is enacted to read:

1000           **75-5c-202. Guardian's authority.**

1001           (1) Except as otherwise limited by the court, a guardian has the authority of a parent  
1002 regarding the protected person's support, care, education, health, and welfare.

1003           (2) A guardian may:

1004           (a) take custody of the protected person and establish the person's dwelling place, but  
1005 may establish or move the protected person's dwelling place outside of this state only if  
1006 approved by court order;

1007           (b) consent to medical or other care, treatment, or service for the protected person;

1008           (c) consent to the protected person's marriage;

1009           (d) if a conservator has not been appointed, apply for, start proceedings for, receive,  
1010 and compel delivery of property due the protected person or benefits to which the protected  
1011 person may be entitled, up to \$50,000 per year; and

1012           (e) if a conservator has not been appointed, commence a proceeding, including an  
1013 administrative proceeding, or take other appropriate action to compel a person to support the  
1014 protected person or to pay money for the protected person's benefit.

1015           (3) The court may expressly authorize the guardian to consent to adoption of the  
1016 protected person.

1017           Section 33. Section **75-5c-203** is enacted to read:

1018           **75-5c-203. Guardian's duties.**

1019           (1) Except as otherwise limited by the court, the guardian has the duties and  
1020 responsibilities of a parent regarding the protected person's support, care, education, health, and  
1021 welfare.

1022           (2) The guardian shall:

(a) within 14 days after appointment, serve on the protected person and all other people entitled to notice of the petition, a copy of the appointment order and notice of the right to request termination or modification;

(b) within 90 days after appointment, file and serve a management plan as required by court rule or court order, describing the strategies that will be used to implement the court order;

(c) file and serve a report on the protected person's condition to the satisfaction of the court annually, upon resignation or removal, upon termination, and as required by court rule or court order;

(d) file a final report and petition to terminate the guardianship within 30 days after the protected person dies or reaches majority;

(e) immediately notify the court if the protected person or guardian changes dwelling place;

(f) if reasonable under the circumstances, encourage the protected person to participate in decisions and act on their own behalf;

(g) if reasonable under the circumstances, delegate to the protected person responsibility for decisions affecting their welfare;

(h) become and remain personally acquainted with the protected person and maintain sufficient contact with the protected person to know of their preferences, values, capabilities, limitations, needs, opportunities, and physical and mental health;

(i) when acting on behalf of the protected person, exercise the degree of care, diligence, and good faith that an ordinarily careful person exercises in their own affairs;

(j) exhibit the utmost trustworthiness, loyalty, and fidelity to the protected person;

(k) take reasonable care of the protected person's personal effects, and if necessary to protect the protected person's property, petition for the appointment of a conservator or for a protective order under Title 75, Chapter 5c, Part 4, Appointment of a Conservator and Other Protective Orders;

(l) expend the protected person's money for their current needs for support, care, education, health, and welfare;

(m) conserve for the protected person's future needs any of the estate that exceeds the protected person's current needs or, if a conservator has been appointed, pay the excess to the

1054 conservator at least annually;  
1055 (n) keep the protected person's estate separate from the guardian's money and property;  
1056 (o) keep contemporaneous records and make them available for inspection as directed  
1057 by the court;  
1058 (p) at termination, deliver any of the estate subject to the guardian's possession,  
1059 ownership, or control and any records as directed by the court;  
1060 (q) if a conservator has been appointed, account at least annually to the conservator for  
1061 the protected person's income and expenses and for any of the estate subject to the guardian's  
1062 possession, ownership, or control; and  
1063 (r) if a conservator has not been appointed:  
1064 (i) file and serve within 90 days after appointment, a management plan as required by  
1065 court rule or court order describing the strategies that will be used to implement the court  
1066 order;  
1067 (ii) file and serve within 90 days after appointment, a detailed inventory of the estate  
1068 subject to the guardian's possession, ownership, or control under an oath or affirmation that the  
1069 inventory is believed to be complete and accurate as far as information permits; and  
1070 (iii) file and serve a report about the administration of the protected person's estate to  
1071 the satisfaction of the court annually, upon resignation or removal, upon termination, and as  
1072 required by court rule or court order.  
1073 (3) If a protected person's parent consents to the protected person's adoption, the  
1074 guardian is entitled to:  
1075 (a) receive notice of and intervene in the adoption proceeding; and  
1076 (b) present evidence relevant to the protected person's best interests.  
1077 (4) A parent of a protected person retains residual parental rights and duties as defined  
1078 in Section 78A-6-105.  
1079 Section 34. Section **75-5c-204** is enacted to read:  
1080 **75-5c-204. Guardian's personal liability.**  
1081 (1) A guardian is not liable to third persons for the protected person's acts solely by  
1082 reason of the guardianship.  
1083 (2) If the guardian performs fiduciary responsibilities with the degree of care,  
1084 diligence, and good faith that an ordinarily careful person exercises in their own affairs, the

guardian is not liable for acts or omissions in performing the fiduciary responsibilities.

(3) If the guardian selects a third person to perform a service for the protected person with the degree of care, diligence, and good faith that an ordinarily careful person exercises in their own affairs, the guardian is not liable for injury resulting from the wrongful conduct of the third person.

Section 35. Section **75-5c-301** is enacted to read:

**Part 3. Appointment of a Guardian for an Adult**

**75-5c-301. Petition to appoint a guardian for an adult.**

The person to be protected or any person interested in the respondent's welfare may file a verified petition to appoint a guardian. If the petitioner is nominated by will or signed writing, the petitioner shall file the petition and a copy of the will or signed writing within 30 days after:

- (1) the nominator's death;
- (2) the nominator's adjudicated incapacity; or
- (3) a written determination by a physician who has examined the nominator that the nominator is no longer able to care for the respondent.

Section 36. Section **75-5c-302** is enacted to read:

**75-5c-302. Procedures before hearing.**

(1) Upon receipt of a petition to appoint a guardian, the court shall schedule a hearing on the petition.

(2) If the respondent is not represented by an attorney, the court shall appoint an attorney to represent the respondent.

Section 37. Section **75-5c-303** is enacted to read:

**75-5c-303. Appointment of guardian -- Standard of evidence -- Petition for protective order.**

(1) The court may appoint a guardian only if the court finds, based on clear and convincing evidence, that:

- (a) the person to be protected has knowingly and voluntarily petitioned the court to appoint a guardian; or
- (b) the respondent is incapacitated and the respondent's particular functional limitations cannot be met by less restrictive means.

(2) With appropriate findings, the court may treat the petition as one for a protective order and enter an appropriate protective order.

(3) If petitioner does not prove the elements of the petition, the court shall dismiss the petition.

(4) Appointment of a guardian based on a request by the person to be protected is not a determination of that person's incapacity.

Section 38. Section **75-5c-304** is enacted to read:

**75-5c-304. Least restrictive order -- Factors.**

The court shall enter the least restrictive order consistent with its findings to accommodate the respondent's particular functional limitations and demonstrated needs, including appointive and other orders that will encourage the respondent to develop maximum self-reliance and independence. The court should consider and weigh, as appropriate:

(1) whether the protected person can manage the activities of daily living through training, education, support services, mental and physical health care, medication, therapy, assistants, assistive devices, or other means that the person will accept;

(2) whether the protected person has planned for health care and financial decision making, such as an advance health care directive, a power of attorney, or a trust or jointly held account, and whether the less restrictive alternatives to a guardianship meet the respondent's needs;

(3) whether the incapacity is likely to be temporary;

(4) the protected person's long-standing values, preferences, and patterns of behavior;  
and

(5) other relevant factors.

Section 39. Section **75-5c-305** is enacted to read:

**75-5c-305. Guardian's authority limited to court order.**

(1) The protected person retains all rights, power, authority, and discretion not expressly granted to the guardian by statute or court order. The protected person retains the right to vote in governmental elections unless the court finds by clear and convincing evidence that the protected person is unable to communicate, with or without accommodation, the specific desire to participate in the voting process. The court may not grant to the guardian the authority to vote on the protected person's behalf.

(2) The guardian has the duties specified by statute or court order. The guardian has only the authority specified by court order. The order shall limit the guardian's authority to what is necessary to accommodate the protected person's particular functional limitations.

(3) If supported by the findings, and except as provided in Section 75-5c-306, the court may grant to the guardian the authority to:

(a) make health care decisions;

(b) consent to admission of the protected person to a licensed health care facility for short-term placement for the purpose of assessment, rehabilitative care, or respite care;

(c) admit the protected person to a licensed health care facility for long-term custodial placement;

(d) make arrangements for the protected person's support, care, comfort, education, and welfare;

(e) take custody of the protected person and make arrangements for a dwelling place;

(f) take reasonable care of the protected person's personal effects; and

(g) make other decisions and give other consents on behalf of the protected person as specified in the order and as necessary to accommodate the protected person's particular functional limitations.

(4) If the court does not appoint a conservator, and if supported by the findings, the order may grant to the guardian the authority to:

(a) take control of and manage a savings account or checking account;

(b) apply for, start proceedings for, receive, and compel delivery of property due the protected person or benefits to which the protected person may be entitled, up to \$50,000 per year;

(c) commence a proceeding, including an administrative proceeding, or take other appropriate action to compel a person to support the protected person or to pay money for the protected person's benefit;

(d) prosecute, defend, and settle legal actions, including administrative proceedings, on behalf of the protected person;

(e) obtain legal advice and representation on behalf of the protected person;

(f) pay the protected person's debts;

(g) give gifts, donations, or contributions on behalf of the protected person within the

1178 limits of Section 75-5c-409:

1179 (h) file tax returns on behalf of the protected person and pay taxes owed by the  
1180 protected person; and

1181 (i) provide for the support, care, comfort, education, and welfare of individuals entitled  
1182 to the protected person's support.

1183 Section 40. Section **75-5c-306** is enacted to read:

1184 **75-5c-306. Restrictions on the guardian's authority.**

1185 (1) The guardian may not:

1186 (a) consent to commitment of the protected person to a mental retardation facility, but  
1187 shall petition the court for an order under Title 62A, Chapter 5, Part 3, Admission to Mental  
1188 Retardation Facility;

1189 (b) consent to commitment of the protected person to a local mental health authority,  
1190 but shall petition the court for an order under Title 62A, Chapter 15, Part 6, Utah State Hospital  
1191 and Other Mental Health Facilities;

1192 (c) consent to sterilization of the protected person, but shall petition the court for an  
1193 order under Title 62A, Chapter 6, Sterilization of Handicapped Person;

1194 (d) consent to termination of the parental rights in the protected person or of the  
1195 protected person's parental rights in another, but shall petition the juvenile court for an order to  
1196 terminate parental rights under Title 78A, Chapter 6, Part 5, Termination of Parental Rights  
1197 Act; or

1198 (e) except as provided in Subsection 75-5c-305(5), exercise the duties or authority of a  
1199 conservator unless appointed as a conservator.

1200 (2) Unless permitted by the court, the guardian may not:

1201 (a) consent to the admission of the protected person to a psychiatric hospital or other  
1202 mental health care facility;

1203 (b) consent to participation in medical research, electroconvulsive therapy or other  
1204 shock treatment, experimental treatment, forced medication with psychotropic drugs, abortion,  
1205 psychosurgery, a procedure that restricts the protected person's rights, or to be a living organ  
1206 donor;

1207 (c) consent to termination of life-sustaining treatment if the protected person has never  
1208 had health care decision making capacity;

1209 (d) consent to name change, adoption, marriage, annulment, or divorce of the protected  
1210 person;

1211 (e) establish or move the protected person's dwelling place outside of this state; or

1212 (f) restrict the protected person's physical liberty, communications, or social activities  
1213 more than reasonably necessary to protect the protected person or others from harm.

1214 (3) (a) The guardian, someone affiliated with the guardian, or someone within the third  
1215 degree of relationship to the guardian may not purchase the protected person's property unless  
1216 permitted by the conservator.

1217 (b) If there is no conservator or if the conservator is the guardian, someone affiliated  
1218 with the guardian, or someone within the third degree of relationship to the guardian, may not  
1219 purchase the protected person's property unless permitted by the court.

1220 Section 41. Section **75-5c-307** is enacted to read:

1221 **75-5c-307. Guardian's duties.**

1222 The guardian shall:

1223 (1) within 14 days after appointment, serve on the protected person and all other people  
1224 entitled to notice of the petition, a copy of the appointment order and notice of the right to  
1225 request termination or modification;

1226 (2) within 90 days after appointment, file and serve a management plan as required by  
1227 court rule or court order describing the strategies that will be used to implement the court  
1228 order;

1229 (3) file and serve a report on the protected person's condition to the satisfaction of the  
1230 court annually, upon resignation or removal, upon termination, and as required by court rule or  
1231 court order;

1232 (4) file a final report and petition to terminate the guardianship within 30 days after the  
1233 protected person dies;

1234 (5) file a petition to terminate or modify the guardianship within 30 days after the  
1235 protected person becomes capable of exercising rights previously removed;

1236 (6) immediately notify the court if the protected person or guardian changes a dwelling  
1237 place;

1238 (7) exercise duties and authority authorized by statute and court order as necessary to  
1239 accommodate the protected person's particular functional limitations;



1240 (8) if reasonable under the circumstances, encourage the protected person to:  
1241 (a) participate in decisions;  
1242 (b) act on their own behalf; and  
1243 (c) overcome the functional limitations that resulted in the protected person's  
1244 incapacity;  
1245 (9) if reasonable under the circumstances, delegate to the protected person  
1246 responsibility for decisions affecting their own welfare;  
1247 (10) make decisions using the substituted judgment decision making standard or the  
1248 best interest decision making standard, whichever applies in the circumstances;  
1249 (11) become and remain personally acquainted with the protected person and maintain  
1250 sufficient contact with the protected person to know their preferences, values, capabilities,  
1251 limitations, needs, opportunities, and physical and mental health;  
1252 (12) when acting on behalf of the protected person, exercise the degree of care,  
1253 diligence, and good faith that an ordinarily careful person exercises in their own affairs;  
1254 (13) exhibit the utmost trustworthiness, loyalty, and fidelity to the protected person;  
1255 (14) if necessary to protect the protected person's property, petition for the appointment  
1256 of a conservator or for a protective order under Title 75, Chapter 5c, Part 4, Appointment of a  
1257 Conservator and Other Protective Orders;  
1258 (15) expend the protected person's money for their current needs for support, care,  
1259 education, health, and welfare;  
1260 (16) conserve for the protected person's future needs any of the estate that exceeds the  
1261 person's current needs or, if a conservator has been appointed, pay the excess to the conservator  
1262 at least annually;  
1263 (17) keep the protected person's estate separate from the guardian's money and  
1264 property;  
1265 (18) keep contemporaneous records and make them available for examination as  
1266 directed by the court;  
1267 (19) at termination, deliver any of the estate subject to the guardian's possession,  
1268 ownership, or control and any records as directed by law or the court;  
1269 (20) if a conservator has been appointed, account at least annually to the conservator  
1270 for the protected person's income and expenses and for any of the estate subject to the

1271 guardian's possession, ownership, or control; and

1272 (21) if a conservator has not been appointed:

1273 (a) file and serve within 90 days after appointment a management plan as required by  
1274 court rule or court order describing the strategies that will be used to implement the court  
1275 order;

1276 (b) file and serve within 90 days after appointment a detailed inventory of the estate  
1277 subject to the guardian's possession, ownership, or control under an oath or affirmation that the  
1278 inventory is believed to be complete and accurate as far as information permits; and

1279 (c) file and serve a report about the administration of the protected person's estate to  
1280 the satisfaction of the court annually, upon resignation or removal, upon termination, and as  
1281 required by court rule or court order.

1282 Section 42. Section **75-5c-308** is enacted to read:

1283 **75-5c-308. Guardian's personal liability.**

1284 (1) A guardian is not liable to third persons for the protected person's acts solely by  
1285 reason of the guardianship.

1286 (2) If the guardian performs fiduciary responsibilities with the degree of care,  
1287 diligence, and good faith that an ordinarily careful person exercises in their own affairs, the  
1288 guardian is not liable for acts or omissions in performing the fiduciary responsibilities.

1289 (3) If the guardian selects a third person to perform a service for the protected person  
1290 with the degree of care, diligence, and good faith that an ordinarily careful person exercises in  
1291 their own affairs, the guardian is not liable for injury resulting from the wrongful conduct of  
1292 the third person.

1293 Section 43. Section **75-5c-309**, which is renumbered from Section 75-5-314 is  
1294 renumbered and amended to read:

1295 **[75-5-314]. 75-5c-309. Mentally incompetent veteran -- Evidence of necessity**  
1296 **for appointment of guardian.**

1297 ~~[Where a petition is filed for the appointment of a guardian for a mentally incompetent~~  
1298 ~~ward, a]~~ A certificate of the administrator or [his] a duly authorized representative, that [such  
1299 person] the respondent has been rated incompetent by the veterans administration on  
1300 examination [in accordance with the] under veterans administration laws and regulations  
1301 ~~[governing such veterans administration]~~ and that the appointment of a guardian is a condition

precedent to the payment of any money [~~due such ward~~] due the respondent by the veterans administration[~~, shall be prima facie~~] is evidence of the necessity for [~~such~~] the appointment.

Section 44. Section **75-5c-310**, which is renumbered from Section 75-5-315 is renumbered and amended to read:

**[75-5-315]. 75-5c-310. Copies of public records furnished to veterans administration.**

~~[When]~~ If a copy of [~~any~~] a public record is required by the veterans administration to [~~be used in determining~~] determine the eligibility of [~~any person~~] an applicant to participate in [~~benefits made available by the veterans administration, the official custodian of such~~] veterans administration benefits, the custodian of the public record shall without charge provide a certified copy of the record to the applicant [~~for such benefits~~] or any person acting on behalf of the [~~authorized representative of the~~] veterans administration [~~with a certified copy of such record~~].

Section 45. Section **75-5c-401** is enacted to read:

#### **Part 4. Appointment of a Conservator and Other Protective Orders**

##### **75-5c-401. Petition to appoint a conservator or enter a protective order.**

(1) The following may file a verified petition to appoint a conservator or to enter a protective order:

- (a) the person to be protected;
- (b) an individual interested in the respondent's estate, affairs, or welfare; or
- (c) a person who would be adversely affected by lack of effective management of the respondent's property and business affairs.

(2) If the petitioner is nominated by will or signed writing, the petitioner shall file the petition and a copy of the will or signed writing within 30 days after:

- (a) the nominator's death;
- (b) the nominator's adjudicated incapacity; or
- (c) a written determination by a physician who has examined the nominator that the nominator is no longer able to care for the respondent.

Section 46. Section **75-5c-402** is enacted to read:

##### **75-5c-402. Jurisdiction over business affairs of respondent.**

Until termination, the court in which the petition is filed has:

1333           (1) exclusive jurisdiction to determine the need for a conservatorship or protective  
1334 order;

1335           (2) exclusive jurisdiction to determine how the respondent's estate that is subject to the  
1336 laws of this state will be managed, expended, or distributed to or for the use of the respondent,  
1337 individuals entitled to the respondent's support, or other claimants; and

1338           (3) concurrent jurisdiction to determine the validity of claims against the respondent or  
1339 the respondent's estate and questions of title concerning estate assets.

1340           Section 47. Section **75-5c-403** is enacted to read:

1341           **75-5c-403. Petition to appoint a conservator or enter a protective order --**

1342 **Preliminary application of property -- Appointment of counsel.**

1343           (1) Upon receipt of a petition to appoint a conservator or enter a protective order, the  
1344 court shall schedule a hearing on the petition.

1345           (2) After a preliminary hearing and without notice, the court may issue orders to  
1346 preserve and apply the respondent's property as may be required for the support of the  
1347 respondent or of individuals entitled to the respondent's support. The court may appoint a  
1348 master to assist in the task.

1349           (3) Unless an adult respondent is represented by an attorney, the court shall appoint an  
1350 attorney to represent the respondent.

1351           (4) If the court determines that a minor respondent's best interests are inadequately  
1352 represented, it may appoint an attorney to represent the respondent, giving consideration to the  
1353 respondent's choice if the respondent is 14 years of age or older.

1354           Section 48. Section **75-5c-404** is enacted to read:

1355           **75-5c-404. Petition to appoint a conservator or enter a protective order for a**  
1356 **minor -- Findings.**

1357           (1) The court shall appoint a conservator or enter a protective order for a minor if it  
1358 finds that:

1359           (a) the order is in the respondent's best interests;

1360           (b) a qualified person seeks appointment;

1361           (c) the court has jurisdiction and venue is proper;

1362           (d) the required notices have been given; and

1363           (e) the respondent:

(i) owns money or property requiring management or protection that cannot otherwise be provided;

(ii) has or may have business affairs that may be put at risk or prevented because of the respondent's age;

(iii) has property that will be wasted or dissipated unless management is provided; or

(iv) needs money for the support, care, education, health, and welfare of the respondent or of individuals who are entitled to the respondent's support and that protection is necessary or desirable to obtain or provide the money.

(2) The court may appoint a conservator for a specified time period. The conservator may not serve past the respondent's 18th birthday.

(3) In other cases, the court may dismiss the proceeding or make any other disposition that will serve the respondent's best interests.

Section 49. Section ~~75-5c-405~~ is enacted to read:

**75-5c-405. Petition to appoint a conservator or enter a protective order for an adult -- Findings.**

(1) The court shall appoint a conservator or enter a protective order for an adult if it finds:

(a) by clear and convincing evidence, that the person to be protected has knowingly and voluntarily petitioned the court to appoint a conservator or enter a protective order; or

(b) (i) by clear and convincing evidence, that the respondent is unable to manage property and business affairs because the respondent is incapacitated, missing, detained, or unable to return to the United States; and

(ii) by a preponderance of evidence, that the respondent:

(A) has property that will be wasted or dissipated unless management is provided; or

(B) needs money for the support, care, education, health, and welfare of the respondent or of individuals who are entitled to the respondent's support and that protection is necessary or desirable to obtain or provide the money.

(2) Appointment of a conservator or entry of a protective order based on a request by the person to be protected or because the respondent is missing, detained, or unable to return to the United States is not a determination of that person's incapacity.

(3) Appointment of a conservator or entry of a protective order may not be denied

1395 solely because the respondent has a valid power of attorney.

1396 Section 50. Section **75-5c-406** is enacted to read:

1397 **75-5c-406. Least restrictive order -- Factors.**

1398 The court shall enter the least restrictive order consistent with its findings to  
1399 accommodate the respondent's particular functional limitations and demonstrated needs,  
1400 including appointive and other orders that will encourage the respondent to develop maximum  
1401 self-reliance and independence. The court may consider and weigh, as appropriate:

1402 (1) whether the protected person can manage the activities of daily living through  
1403 training, education, support services, mental and physical health care, medication, therapy,  
1404 assistants, assistive devices, or other means that the person will accept;

1405 (2) whether the protected person has planned for financial decision making, such as a  
1406 power of attorney, a trust, or jointly held account, and whether the less restrictive alternatives  
1407 to a conservatorship meet the respondent's needs;

1408 (3) whether the incapacity is likely to be temporary;

1409 (4) the protected person's long-standing values, preferences, and patterns of behavior;  
1410 and

1411 (5) other relevant factors.

1412 Section 51. Section **75-5c-407** is enacted to read:

1413 **75-5c-407. Authority of court.**

1414 (1) Upon determining that a basis exists for a conservatorship or protective order, the  
1415 court has the following authority, which may be exercised directly or through a conservator:

1416 (a) The court has all the authority over the estate and business affairs of a minor  
1417 protected person which may be necessary for the best interest of the protected person and  
1418 members of the protected person's immediate family.

1419 (b) The court has all the authority over the estate and business affairs of an adult  
1420 protected person for the benefit of the protected person and individuals entitled to the protected  
1421 person's support that the protected person could exercise if present and not under  
1422 conservatorship or protective order.

1423 (2) The court may limit authority otherwise conferred on a conservator and may  
1424 remove or modify any limitation at any time.

1425 Section 52. Section **75-5c-408** is enacted to read:

**75-5c-408. Protective arrangements and single transactions.**

(1) Upon determining that a basis exists for a protective order, the court, without appointing a conservator, may:

(a) authorize, direct, or ratify any transaction necessary or desirable to achieve any arrangement for security, service, or care meeting the foreseeable needs of the protected person, including:

(i) payment, delivery, deposit, or retention of funds or property;

(ii) sale, mortgage, lease, or other transfer of property;

(iii) purchase of an annuity;

(iv) making a contract for life care, deposit contract, or contract for training and education; or

(v) addition to or establishment of a suitable trust; and

(b) authorize, direct, or ratify any other contract, trust, will, or transaction relating to the protected person's property and business affairs, including settlement of a claim, upon determining that it is in the protected person's best interest.

(2) In deciding whether to approve a protective arrangement or other transaction under this section, the court shall consider the factors described in Subsection 75-5c-409(3).

(3) The court may appoint a master to assist in any transaction or protective arrangement authorized under this section. The master has the authority conferred by the order and shall serve until discharged after reporting to the court.

Section 53. Section **75-5c-409** is enacted to read:

**75-5c-409. Action requiring court approval.**

(1) After notice to interested persons and upon express authorization of the court, a conservator for a protected person other than a minor may:

(a) if an estate is ample to provide for the distributions authorized by Section 75-5c-417, give gifts, donations, and contributions that the protected person might have been expected to give, in amounts that do not exceed in the aggregate for any calendar year 20% of the estate income in that year;

(b) convey, release, or disclaim contingent and expectant interests in property, including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entireties;

1457           (c) exercise or release a power of appointment;  
1458           (d) create a revocable or irrevocable trust of estate property, whether or not the trust  
1459 extends beyond the duration of the conservatorship, or revoke or amend a trust revocable by the  
1460 protected person;  
1461           (e) exercise rights to elect options and change beneficiaries under insurance policies  
1462 and annuities or surrender the policies and annuities for their cash value;  
1463           (f) exercise any right to an elective share in the estate of the protected person's  
1464 deceased spouse and to renounce or disclaim any interest by testate or intestate succession or  
1465 by transfer inter vivos; and  
1466           (g) make, amend, or revoke the protected person's will.  
1467           (2) A conservator, in making, amending, or revoking the protected person's will, shall  
1468 comply with Title 75, Chapter 2, Part 5, Wills.  
1469           (3) In exercising or in approving a conservator's exercise of the authority listed in  
1470 Subsection (1), the court shall use the substituted judgment decision making standard, unless  
1471 the best interest decision making standard is permitted by law. The court shall also consider:  
1472           (a) the financial needs of the protected person, the needs of individuals entitled to the  
1473 protected person's support, and the interest of creditors;  
1474           (b) possible reduction of tax liabilities;  
1475           (c) eligibility for governmental assistance;  
1476           (d) the protected person's previous pattern of giving or level of support;  
1477           (e) the existing estate plan;  
1478           (f) the protected person's life expectancy and the probability that the conservatorship  
1479 will terminate before the protected person's death; and  
1480           (g) any other relevant factors.  
1481           (4) A conservator may revoke or amend a durable power of attorney of which the  
1482 protected person is the principal. If a durable power of attorney is in effect, a decision of the  
1483 conservator takes precedence over that of the agent unless the court orders otherwise.  
1484           Section 54. Section **75-5c-410** is enacted to read:  
1485           **75-5c-410. Conservator's duties.**  
1486           The conservator shall:  
1487           (1) within 14 days after appointment, serve on the protected person, and all other



1488 people entitled to notice of the petition, a copy of the appointment order and notice of the right  
1489 to request termination or modification;

1490 (2) within 90 days after appointment, file and serve a management plan as required by  
1491 court rule or court order describing the strategies that will be used to implement the court  
1492 order;

1493 (3) within 90 days after appointment, file and serve a detailed inventory of the estate  
1494 subject to the conservator's possession, ownership, or control under an oath or affirmation that  
1495 the inventory is believed to be complete and accurate as far as information permits;

1496 (4) file and serve a report about the administration of the protected person's estate to  
1497 the satisfaction of the court annually, upon resignation or removal, upon termination, and as  
1498 required by court rule or court order;

1499 (5) comply with Section 75-5c-418 if the protected person dies;

1500 (6) file a petition to terminate or modify the conservatorship within 30 days after the  
1501 protected person becomes capable of exercising rights previously removed;

1502 (7) if the appointment is for a minor protected person, file a final report and petition to  
1503 terminate the conservatorship within 30 days after the protected person reaches majority;

1504 (8) immediately notify the court if the protected person or conservator changes a  
1505 dwelling place;

1506 (9) exercise duties and authority authorized by statute and court order as necessary to  
1507 accommodate the protected person's particular functional limitations;

1508 (10) if reasonable under the circumstances, encourage the protected person to:

1509 (a) participate in decisions;

1510 (b) act on their own behalf; and

1511 (c) overcome the functional limitations that resulted in the protected person's  
1512 incapacity;

1513 (11) if reasonable under the circumstances, delegate to the protected person  
1514 responsibility for decisions affecting their own welfare;

1515 (12) act as a fiduciary and observe the standard of care of a trustee under Title 75,  
1516 Chapter 7, Part 9, Utah Uniform Prudent Investor Act;

1517 (13) keep contemporaneous records of the administration of the estate and make them  
1518 available for examination as directed by the court;

(14) take into account any estate plan of the protected person known to the conservator and may examine the will and any other donative, nominative, or other appointive instrument of the protected person in investing the estate, selecting assets of the estate for distribution, and invoking power of revocation or withdrawal available for the use and benefit of the protected person and exercisable by the conservator; and

(15) at termination, deliver any of the estate subject to the conservator's possession, ownership, or control and any records as directed by law or the court.

Section 55. Section **75-5c-411** is enacted to read:

**75-5c-411. Title by appointment.**

The appointment of a conservator vests title in the conservator as trustee to all property of the protected person, or to the part specified in the order, held at the time of appointment or later acquired. An order vesting title in the conservator to only part of the property of the protected person creates a conservatorship limited to assets specified in the order.

Section 56. Section **75-5c-412** is enacted to read:

**75-5c-412. Protected person's interest inalienable.**

(1) Except as otherwise provided in Subsections (3) and (4), the interest of a protected person in property vested in a conservator is not transferable or assignable by the protected person. An attempted transfer or assignment by the protected person, although ineffective to affect property rights, may give rise to a claim against the protected person for restitution or damages which may be presented to the conservator.

(2) Property vested in a conservator by appointment and the interest of the protected person in that property are not subject to levy, garnishment, or similar process for claims against the protected person unless allowed after presentation.

(3) A person without knowledge of the conservatorship who in good faith and for security or substantially equivalent value receives delivery of tangible personal property normally transferred by delivery is protected as if the protected person or transferee had valid title.

(4) A third party who deals with the protected person with respect to property vested in a conservator is entitled to any protection provided in other law.

Section 57. Section **75-5c-413** is enacted to read:

**75-5c-413. Sale, encumbrance, or other transaction involving conflict of interest.**

Any transaction affected by a substantial conflict between the conservator's fiduciary and personal interests is voidable unless the transaction is expressly authorized by the court after notice to interested persons. A transaction affected by a substantial conflict between fiduciary and personal interests includes any sale, encumbrance, or other transaction involving the estate entered into by the conservator, the spouse, descendant, agent, or attorney of a conservator, or a corporation or other enterprise in which the conservator has a substantial beneficial interest.

Section 58. Section **75-5c-414** is enacted to read:

**75-5c-414. Protection of person dealing with conservator.**

(1) A person who assists or deals with a conservator in good faith and for value in any transaction other than one requiring a court order is protected as though the conservator properly exercised the authority. A person who knowingly assists or deals with a conservator is not required to inquire into the conservator's authority or the propriety of its exercise, but restrictions on the conservator's authority endorsed on letters of office are effective as to third persons. A person who pays or delivers assets to a conservator is not responsible for their proper application.

(2) Protection provided by this section extends to any procedural irregularity or jurisdictional defect that occurred in the proceedings leading to the issuance of letters and is not a substitute for protection provided to persons assisting or dealing with a conservator by comparable provisions in other law relating to commercial transactions or to simplifying transfers of securities by fiduciaries.

Section 59. Section **75-5c-415** is enacted to read:

**75-5c-415. Authority of conservator in administration.**

(1) Except as otherwise restricted in the appointment order and endorsed on the letters of office, a conservator has all of the authority granted in this section and any additional authority granted by law to a trustee.

(2) A conservator, acting reasonably and in an effort to accomplish the purpose of the appointment, and without court authorization, may:

(a) collect, hold, and retain estate assets, including assets in which the conservator has a personal interest and real property in another state, until the conservator considers that disposition of an asset should be made;

- 1581           (b) receive additions to the estate;
- 1582           (c) continue or participate in the operation of a business or other enterprise;
- 1583           (d) acquire an undivided interest in an estate asset in which the conservator, in a  
1584 fiduciary capacity, holds an undivided interest;
- 1585           (e) invest estate assets as though the conservator were a trustee;
- 1586           (f) deposit estate money in a financial institution, including one operated by the  
1587 conservator;
- 1588           (g) acquire or dispose of an estate asset, including real property in another state, for  
1589 cash or on credit, at public or private sale, and manage, develop, improve, exchange, partition,  
1590 change the character of, or abandon an estate asset;
- 1591           (h) make ordinary or extraordinary repairs or alterations in buildings or other  
1592 structures, demolish any improvements, and raze existing or erect new party walls or buildings;
- 1593           (i) subdivide, develop, or dedicate land to public use, make or obtain the vacation of  
1594 plats and adjust boundaries, adjust differences in valuation or exchange or partition by giving  
1595 or receiving considerations, and dedicate easements to public use without consideration;
- 1596           (j) enter for any purpose into a lease as lessor or lessee, with or without option to  
1597 purchase or renew, for a term within or extending beyond the term of the conservatorship;
- 1598           (k) enter into a lease or arrangement for exploration and removal of minerals or other  
1599 natural resources or enter into a pooling or unitization agreement;
- 1600           (l) grant an option involving disposition of an estate asset and take an option for the  
1601 acquisition of any asset;
- 1602           (m) vote a security, in person or by general or limited proxy;
- 1603           (n) pay calls, assessments, and any other sums chargeable or accruing against or on  
1604 account of securities;
- 1605           (o) sell or exercise stock subscription or conversion rights;
- 1606           (p) consent, directly or through a committee or other agent, to the reorganization,  
1607 consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;
- 1608           (q) hold a security in the name of a nominee or in other form without disclosure of the  
1609 conservatorship so that title to the security may pass by delivery;
- 1610           (r) insure estate assets against damage or loss and the conservator against liability with  
1611 respect to a third person;

(s) borrow money on behalf of the protected person, with or without security, to be repaid from the estate or otherwise and advance money for the protection of the estate or the protected person and for all expenses, losses, and liability sustained in the administration of the estate or because of the holding or ownership of any assets, for which the conservator has a lien on the estate as against the protected person for advances so made;

(t) pay or contest any claim, settle a claim by or against the estate or the protected person by compromise, arbitration, or otherwise, and release, in whole or in part, any claim belonging to the estate to the extent the claim is uncollectible;

(u) pay taxes, assessments, compensation of the conservator and any guardian, and other expenses incurred in the collection, care, administration, and protection of the estate;

(v) allocate items of income or expense to income or principal of the estate, as provided by other law, including creation of reserves out of income for depreciation, obsolescence, or amortization or for depletion of minerals or other natural resources;

(w) pay any sum distributable to a protected person or to individuals entitled to the protected person's support by paying the sum to the distributee or by paying the sum for the use of the distributee;

(i) to the distributee's guardian or custodian under Title 75, Chapter 5a, Uniform Transfers to Minors Act; or

(ii) if there is no guardian or custodian, to a relative or other person having physical custody of the distributee;

(x) prosecute or defend actions, claims, or proceedings in any jurisdiction for the protection of estate assets and of the conservator in the performance of fiduciary duties; and

(y) execute and deliver all instruments that will accomplish or facilitate the exercise of the conservator's authority.

Section 60. Section **75-5c-416** is enacted to read:

**75-5c-416. Delegation.**

(1) A conservator may not delegate to an agent or another conservator the entire administration of the estate, but a conservator may delegate the performance of functions that a prudent trustee of comparable skills may delegate under similar circumstances.

(2) The conservator shall exercise reasonable care, skill, and caution in:

(a) selecting an agent;

(b) establishing the scope and terms of a delegation, consistent with the purposes and terms of the conservatorship;

(c) periodically reviewing an agent's overall performance and compliance with the terms of the delegation; and

(d) redressing an action or decision of an agent which would constitute a breach of trust if performed by the conservator.

(3) A conservator who complies with Subsections (1) and (2) is not liable to the protected person or to the estate for the decisions or actions of the agent to whom a function was delegated.

(4) In performing a delegated function, an agent shall exercise reasonable care to comply with the terms of the delegation.

(5) By accepting a delegation from a conservator subject to Utah law, an agent submits to the jurisdiction of Utah courts.

Section 61. Section **75-5c-417** is enacted to read:

**75-5c-417. Principles of distribution by conservator.**

Unless otherwise specified in the appointment order and endorsed on the letters of office or contrary to the management plan, a conservator may, without further court authorization or confirmation, expend or distribute income or principal of the estate for the support, care, education, health, and welfare of the protected person and individuals entitled to the protected person's support, including the payment of child support or spousal support, under the following rules:

(1) A conservator shall consider a guardian's recommendations about the appropriate standard of support, care, education, health, and welfare for the protected person or individuals entitled to the protected person's support. If the protected person is a minor, the conservator shall consider a parent's recommendations.

(2) A conservator may not be surcharged for money paid to persons furnishing support, care, education, or benefits to a protected person or individuals entitled to the protected person's support under the recommendations of the protected person's parent or guardian, unless the conservator knows that the parent or guardian derives a personal financial benefit, including relief from any personal duty of support, or the recommendations are not in the best interest of the protected person.

(3) In making distributions under this Subsection (3), the conservator shall consider:

(a) the size of the estate, the estimated duration of the conservatorship, and the likelihood that the protected person, at some future time, may be fully self-sufficient and able to manage business affairs and the estate;

(b) the accustomed standard of living of the protected person and individuals entitled to the protected person's support; and

(c) other money or sources used for the support of the protected person and individuals entitled to the protected person's support.

(4) Money expended under this Subsection (4) may be paid by the conservator to any person, including the protected person, as reimbursement for expenditures that the conservator might have made, or in advance for services to be rendered to the protected person if it is reasonable to expect the services will be performed and advance payments are customary or reasonably necessary under the circumstances.

Section 62. Section **75-5c-418** is enacted to read:

**75-5c-418. Death of protected person.**

(1) Upon the death of a protected person, the conservator shall deliver to the court for safekeeping any will of the protected person which may have come into the conservator's possession, inform the personal representative or beneficiary named in the will of the delivery, and retain the estate for delivery to the decedent's personal representative or to another person entitled to it.

(2) Upon the death of a protected person, the conservator shall conclude the administration of the estate by distribution to the protected person's successors. The conservator shall file a final report and petition to terminate the conservatorship within 30 days after distribution.

Section 63. Section **75-5c-419** is enacted to read:

**75-5c-419. Presentation and allowance of claims.**

(1) A conservator may pay, or secure by encumbering estate assets, claims against the estate or against the protected person arising before or during the conservatorship upon their presentation and allowance under the priorities stated in Subsection (5). A claimant may present a claim by:

(a) sending or delivering to the conservator a written statement of the claim, indicating

its basis, the name and address of the claimant, and the amount claimed; or

(b) filing a written statement of the claim, in a form acceptable to the court, with the court clerk and sending or delivering a copy of the statement to the conservator.

(2) A claim is considered presented on receipt of the written statement of claim by the conservator or the filing of the claim with the court clerk, whichever occurs first.

(3) A presented claim is allowed if it is not disallowed by written statement sent or delivered by the conservator to the claimant within 60 days after its presentation. Before payment, the conservator may change an allowance to a disallowance in whole or in part, but not after allowance under a court order or judgment or an order directing payment of the claim. The presentation of a claim tolls the running of any statute of limitations relating to the claim until 30 days after its disallowance.

(4) A claimant whose claim has not been paid may petition the court for determination of the claim at any time before it is barred by a statute of limitations and, upon proof, procure an order for its allowance, payment, or security by encumbering estate assets. If a proceeding is pending against a protected person at the time of the conservator's appointment or is later initiated against the protected person, the moving party shall give to the conservator notice of any proceeding that could result in creating a claim against the estate.

(5) If it appears that the estate is likely to be exhausted before all existing claims are paid, the conservator shall distribute the estate in money or in kind in payment of claims in the following order:

(a) costs and expenses of administration;

(b) claims of the federal or state government having priority under other law;

(c) claims incurred by the conservator for support, care, education, health, and welfare previously provided to the protected person or individuals entitled to the protected person's support;

(d) claims arising before the conservatorship; and

(e) all other claims.

(6) Preference may not be given in the payment of a claim over any other claim of the same class, and a claim due and payable may not be preferred over a claim not due.

(7) If assets of the conservatorship are adequate to meet all existing claims, the court, acting in the best interest of the protected person, may order the conservator to grant a security



1736 interest in the estate for the payment of any or all claims at a future date.

1737 Section 64. Section **75-5c-420** is enacted to read:

1738 **75-5c-420. Personal liability of conservator.**

1739 (1) Except as otherwise agreed, a conservator is not personally liable on a contract  
1740 properly entered into in a fiduciary capacity in the course of administration of the estate unless  
1741 the conservator fails to reveal in the contract the representative capacity and identify the estate.

1742 (2) A conservator is not personally liable for obligations arising from possession,  
1743 ownership, or control of estate property or for other acts or omissions occurring in the course of  
1744 administration of the estate unless the conservator is personally at fault.

1745 (3) Regardless whether the conservator is personally liable, claims based on contracts  
1746 entered into by a conservator in a fiduciary capacity, obligations arising from possession,  
1747 ownership, or control of the estate, and claims based on torts committed in the course of  
1748 administration of the estate may be asserted against the estate by proceeding against the  
1749 conservator in a fiduciary capacity.

1750 (4) A question of liability between the estate and the conservator personally may be  
1751 determined in a proceeding for accounting, surcharge, or indemnification, or in another  
1752 appropriate proceeding or action.

1753 (5) A conservator is not personally liable for any environmental condition on or injury  
1754 resulting from any environmental condition on land solely by reason of acquisition of title  
1755 under Section 75-5c-411.

1756 Section 65. Section **75-5c-421** is enacted to read:

1757 **75-5c-421. Payment of debt and delivery of property to foreign conservator**  
1758 **without local proceeding.**

1759 (1) A person who is indebted to or has the possession of tangible or intangible property  
1760 of a protected person may pay the debt or deliver the property to a foreign conservator,  
1761 guardian of the estate, or other court-appointed fiduciary of the state in which a protected  
1762 person resides.

1763 (2) Payment or delivery may be made only upon proof of appointment and presentation  
1764 of an affidavit made by or on behalf of the fiduciary stating that a protective proceeding  
1765 relating to the protected person is not pending in this state and the foreign fiduciary is entitled  
1766 to payment or to receive delivery.

1767 (3) Payment or delivery under Subsection (1) discharges the debtor or possessor, absent  
1768 knowledge of a protective proceeding pending in this state.

1769 Section 66. Section **78B-5-804** is amended to read:

1770 **78B-5-804. Money deposited in court.**

1771 (1) (a) Any person depositing money in court, to be held in trust, shall pay it to the  
1772 court clerk.

1773 (b) The clerk shall deposit the money in a court trust fund or with the county treasurer  
1774 or city recorder to be held subject to the order of the court.

1775 (2) The Judicial Council shall adopt rules governing the maintenance of court trust  
1776 funds and the disposition of interest earnings on those trust funds.

1777 (3) (a) Any interest earned on trust funds in the courts of record that is not required to  
1778 accrue to the litigants by Judicial Council rule or court order shall be deposited in a restricted  
1779 account. Any interest earned on trust funds in the courts not of record that is not required to  
1780 accrue to the litigants by Judicial Council rule or court order shall be deposited in the general  
1781 fund of the county or municipality.

1782 (b) The Legislature shall appropriate funds from the restricted account of the courts of  
1783 record to the Judicial Council to:

1784 (i) offset costs to the courts for collection and maintenance of court trust funds; ~~[and]~~

1785 (ii) provide accounting and auditing of all court revenue and trust accounts~~[-]; and~~

1786 (iii) review or audit annual reports and accounting of guardians and conservators and  
1787 recruit court visitors in guardianship and conservatorship proceedings.

1788 Section 67. **Repealer.**

1789 This bill repeals:

1790 Section **53A-2-202, Guardianship for residency purposes by responsible adult --**

1791 **Procedure to obtain -- Termination.**

1792 Section **75-5-101, Jurisdiction of subject matter -- Consolidation of proceedings.**

1793 Section **75-5-102, Facility of payment or delivery.**

1794 Section **75-5-103, Delegation of powers by parent or guardian.**

1795 Section **75-5-104, Power of court to appoint guardian ad litem not affected.**

1796 Section **75-5-105, Bond of guardian.**

1797 Section **75-5-201, Status of guardian of minor -- General.**

1798           Section **75-5-202, Appointment of guardian of minor.**

1799           Section **75-5-202.5, Appointment of guardian by written instrument.**

1800           Section **75-5-203, Objection to appointment.**

1801           Section **75-5-204, Court appointment of guardian of minor -- Conditions for**

1802 **appointment.**

1803           Section **75-5-205, Court appointment of guardian of minor -- Venue.**

1804           Section **75-5-207, Court appointment of guardian of minor -- Procedure.**

1805           Section **75-5-208, Consent to service by acceptance of appointment -- Notice.**

1806           Section **75-5-209, Powers and duties of guardian of minor -- Residual parental**

1807 **rights and duties -- Adoption of a ward.**

1808           Section **75-5-210, Termination of appointment of guardian -- General.**

1809           Section **75-5-211, Proceedings subsequent to appointment -- Venue.**

1810           Section **75-5-212, Resignation or removal proceedings.**

1811           Section **75-5-301, Appointment of guardian for incapacitated person.**

1812           Section **75-5-302, Venue.**

1813           Section **75-5-303, Procedure for court appointment of a guardian of an**

1814 **incapacitated person.**

1815           Section **75-5-304, Findings -- Limited guardianship preferred -- Order of**

1816 **appointment.**

1817           Section **75-5-305, Acceptance of appointment -- Consent to jurisdiction.**

1818           Section **75-5-306, Termination of guardianship for incapacitated person.**

1819           Section **75-5-307, Removal or resignation of guardian -- Termination of incapacity.**

1820           Section **75-5-308, Visitor in guardianship proceeding.**

1821           Section **75-5-309, Notices in guardianship proceedings.**

1822           Section **75-5-310, Temporary guardians.**

1823           Section **75-5-311, Who may be guardian -- Priorities.**

1824           Section **75-5-312, General powers and duties of guardian -- Penalties.**

1825           Section **75-5-313, Proceedings subsequent to appointment -- Venue.**

1826           Section **75-5-316, Expedited guardianship proceedings.**

1827           Section **75-5-401, Protective proceedings.**

1828           Section 75-5-402, Protective proceedings -- Jurisdiction of affairs of protected  
1829 **persons.**

1830           Section 75-5-403, Venue.

1831           Section 75-5-404, Original petition for appointment or protective order.

1832           Section 75-5-405, Notice.

1833           Section 75-5-406, Protective proceedings -- Request for notice -- Interested person.

1834           Section 75-5-407, Procedure concerning hearing and order on original petition.

1835           Section 75-5-408, Permissible court orders.

1836           Section 75-5-409, Protective arrangements and single transactions authorized.

1837           Section 75-5-411, Bond.

1838           Section 75-5-412, Terms and requirements of bonds.

1839           Section 75-5-413, Acceptance of appointment -- Consent to jurisdiction.

1840           Section 75-5-414, Compensation and expenses.

1841           Section 75-5-415, Death, resignation or removal of conservator.

1842           Section 75-5-416, Petitions for orders subsequent to appointment.

1843           Section 75-5-417, General duty of conservator.

1844           Section 75-5-418, Inventory and records.

1845           Section 75-5-419, Accounts.

1846           Section 75-5-420, Conservators -- Title by appointment.

1847           Section 75-5-421, Recording of conservator's letters.

1848           Section 75-5-422, Sale, encumbrance or transaction involving conflict of interest --

1849 **Voidable -- Exceptions.**

1850           Section 75-5-423, Persons dealing with conservators -- Protection.

1851           Section 75-5-424, Powers of conservator in administration.

1852           Section 75-5-425, Distributive duties and powers of conservator.

1853           Section 75-5-426, Enlargement or limitation of powers of conservator.

1854           Section 75-5-427, Preservation of estate plan.

1855           Section 75-5-428, Claims against protected person -- Enforcement.

1856           Section 75-5-429, Individual liability of conservator.

1857           Section 75-5-430, Termination of proceeding.

1858           Section 75-5-431, Payment of debt and delivery of property to foreign conservator

1859 **without local proceedings.**

1860 Section **75-5-432, Foreign conservator -- Proof of authority -- Bond -- Powers.**

1861 Section **75-5-433, Embezzlement of protected person's estate -- Citation to person**

1862 **suspected.**

1863 Section 68. **Effective date.**

1864 This bill takes effect on July 1, 2011.